

rule, a publisher may register a group of newspapers if the applicant submits the claim using the appropriate electronic application and submits a PDF copy of each issue within three months after the publication of the earliest issue in the group.<sup>5</sup> Unlike the paper application, the electronic registration system contains automated validations that enforce this three-month deadline.

Since the Office implemented these new requirements, several newspaper publishers have reported difficulty and delays in creating PDF copies. Many publishers have not been able to submit their claims before the three-month deadline. And some publishers have attempted to bypass the validations in the electronic system by submitting a paper application and microfilm copies. The Office has refused to register these claims, because they were submitted on a paper form and with the wrong deposit, or because they were received after the deadline. On average, it takes three months or more to process a paper application and a physical deposit,<sup>6</sup> so by the time the Office has issued a refusal, the publisher may not have an opportunity to resubmit their claim on the appropriate form and with an appropriate deposit.

To address these problems and ensure that newspaper publishers can obtain the statutory benefits of registration, the Office has decided to eliminate the three-month filing requirement. This will provide more flexibility for applicants, and allow them to register issues that otherwise would be ineligible for registration. The Office will remove the automated validation that prevents publishers from submitting issues that are more than three months old. Beginning on February 18, 2019, publishers will be permitted to submit claims through the electronic registration system, regardless of when their issues were published. Likewise, publishers may electronically resubmit claims that were refused because they were filed on a paper form or without a digital deposit, or because they were received after the three month deadline. To do so, publishers must submit a new application (using the electronic form designated for newspaper issues), a new digital deposit, and a new filing fee.

<sup>5</sup> 37 CFR 202.4(e). The new deadline was based on the date of publication for the earliest issue in the group (rather than the most recent) for the reasons stated in the notice of proposed rulemaking dated November 6, 2017. See 82 FR at 51377–78.

<sup>6</sup> See U.S. Copyright Office, *Registration Processing Times*, available at <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf>.

The Office will monitor this change to the rule to determine whether it succeeds in incentivizing increased registrations and to ensure that it does not have an adverse effect on the Library's collections. In the meantime, the Office has prepared a video tutorial that provides step-by-step instructions on how to complete the electronic application and upload digital copies.<sup>7</sup> The help text that accompanies the application also provides answers to frequently asked questions.<sup>8</sup> And the Office has published a circular that provides detailed information about the group registration process.<sup>9</sup>

The Office still encourages publishers to submit their claims within three months of publication, because it may provide certain legal benefits. To seek statutory damages and attorney's fees in an infringement action, publishers must register their issues in a timely manner. Specifically, a publisher typically may seek these remedies if a newspaper issue was registered (i) before the infringement commenced or (ii) within three months after the first publication of that work. See 17 U.S.C. 412.

The Office finds there is good cause for adopting this amendment without first publishing a notice of proposed rulemaking, because it is a "rule[]" of agency organization, procedure, or practice.<sup>10</sup> It does not adversely "alter the rights or interests of parties"—if anything, it eases the requirements for applicants choosing to exercise this option by removing the time restriction on its availability.<sup>11</sup> It therefore merely "alter[s] the manner in which the parties present themselves . . . to the agency."<sup>12</sup> *Id.* Thus, notice and comment is not required under the Administrative Procedure Act.

All other provisions in the current regulation on group registration of newspapers remain unaffected.

#### List of Subjects in 37 CFR Part 202

Copyright.

For the reasons set forth above, the Copyright Office amends 37 CFR part 202 as follows:

<sup>7</sup> See *Group of Newspaper Issues Tutorial*, U.S. Copyright Office, <https://www.copyright.gov/eco/newspaper.mp4>.

<sup>8</sup> See *Help: Group Registration of Newspaper Issues*, U.S. Copyright Office, <https://www.copyright.gov/eco/help-newspapers.html>.

<sup>9</sup> See U.S. Copyright Office, *Circular 62A: Group Registration of Newspapers* (2018), available at <https://www.copyright.gov/circs/circ62a.pdf>.

<sup>10</sup> 5 U.S.C. 553(b)(A).

<sup>11</sup> *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994); see also 5 U.S.C. 553(d)(1) (publication 30 days before effective date of substantive rule not required for rule that "grants or recognizes an exemption or relieves a restriction").

<sup>12</sup> *JEM Broad. Co.*, 22 F.3d at 326.

## PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

### § 202.4 [Amended]

■ 2. Amend § 202.4 by removing paragraph (e)(7).

Dated: January 31, 2019.

**Karyn A. Temple,**

*Acting Register of Copyrights and Director Of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

[FR Doc. 2019-02186 Filed 2-12-19; 8:45 am]

**BILLING CODE 1410-30-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 203

[Docket No. 2017-1]

### Freedom of Information Act Regulations

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is issuing a final rule that amends its regulations governing its practices and procedures under the Freedom of Information Act (FOIA). The final rule closely follows the February 7, 2017 interim rule, implementing the FOIA Improvement Act of 2016. The final rule makes limited modifications to align with public comments and to promote further regulatory clarity and customer service.

**DATES:** *Effective date:* March 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov), or by telephone at 202-707-8350; or Catherine Zaller Rowland, Associate Register of Copyrights and Director of Public Information and Education, by email at [crowland@copyright.gov](mailto:crowland@copyright.gov), or by telephone at 202-707-0956.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Freedom of Information Act (FOIA), section 552 of title 5 of the United States Code, provides a statutory right of access to federal agency records. In part, FOIA establishes procedures by

which a member of the public may request records from a federal agency and the parameters by which an agency must operate when responding to a request from the public. FOIA requires agencies to promulgate regulations addressing the logistical requirements of making requests, fees, and expedited processing<sup>1</sup> while providing areas of discretionary authority.

In 2017, the Copyright Office (the “Office”) published an Interim Rule<sup>2</sup> in response to the FOIA Improvement Act of 2016 (the “Act”),<sup>3</sup> which amended FOIA to address a range of procedural issues and required federal agencies subject to FOIA to review and update their regulations. In its interim rule, the Office updated its regulations to conform with the Act, including the Act’s prohibition on charging fees after certain agency failures, specifying a ninety-day period for filing an administrative appeal, and requiring that records be made available in electronic format. The Office also adopted, where appropriate, the template for agency FOIA regulations released by the Office of Information Policy at the Department of Justice (DOJ OIP). The template provided a clear structure for the required regulatory provisions, allowed the Office to formalize its multi-track processing practices, and established clear regulatory language to improve customer service.<sup>4</sup> In December 2018, the Office also made minor technical changes to its FOIA regulations to reflect the Office’s current organizational structure while updating its licensing regulations relating to section 115 of title 17.<sup>5</sup>

The Office received comments from two individuals as well as the National Archives and Records Administration (NARA).<sup>6</sup> Having reviewed and carefully considered these comments, the Office now issues a final rule that closely follows the proposed rule, with minor amendments as discussed below.

## II. Discussion of Comments and Other Considerations

### A. NARA Record Schedule Technical Correction

NARA submitted a technical comment related to § 203.10, Preservation of Records, which referenced General Records Schedule

(GRS) 14. NARA notes that GRS 14 was replaced with a new records schedule, GRS 4.2.<sup>7</sup> The final rule incorporates this change.

### B. Comments From Individuals

Both individual commenters wrote in support of the Office’s interim rule as an effort to provide citizens with access to records and improve agency responsiveness to the public. One commenter also voiced a general concern that access to records should not be dependent upon access to technology.<sup>8</sup> The Office recognizes that individuals without access to technology can encounter unique obstacles to accessing the Office’s information and records but believes that these concerns are adequately addressed by the Office’s regulations and practices and that no amendments are required to the rule.

The Office receives a large number of its FOIA requests from individuals without access to technology, often for records that are already made publicly available by the Office in electronic form. When the Office receives such a request, it responds in writing by mail and includes copies of the requested documents, even if they are otherwise publicly available on the Office’s website at [www.copyright.gov](http://www.copyright.gov). Further, the Office maintains the Public Information Office (PIO), which assists callers and correspondents in accessing information, including by providing printed copies of proactively disclosed records upon request.

### C. Other Considerations and Technical Changes

The Office has made three additional technical changes to the final rule based on its ongoing review of the law and additional guidance made publicly available by DOJ OIP. First, the Office has added language to the rule in § 203.7(c), explaining that the Office will alert requesters as to the availability of mediation services offered by NARA’s Office of Government Information Services when the Office provides notice of unusual circumstances. The interim rule included language explaining that the Office would alert a requester of the dispute resolution services when issuing a denial notification but inadvertently omitted similar language in the rule with regard to notices of delays due to unusual circumstances. The Office’s practices have been to notify requesters of their right to dispute resolution services in both denials and notices of unusual

circumstances, and the final rule now reflects the Office’s practices.

Second, the final rule clarifies in § 203.11(j) that only Privacy Act<sup>9</sup> requests are processed under the Office’s Privacy Act fee schedule. The Office makes this technical amendment to clear up any possible confusion about the Privacy Act fee schedule by changing the language to focus on the type of request rather than the requester.

Third, the Office has amended § 203.11(k) to adopt the streamlined fee waiver factors published by the DOJ OIP subsequent to the publication of the Office’s interim rule.<sup>10</sup> This updated template language improves regulatory clarity but does not materially change the proposed § 203.11(k).

Accordingly, for the reasons explained above, the Office has determined that these additional amendments comprise non-substantive, procedural changes not “alter[ing] the rights or interests of the parties,” and thus are not subject to further notice and comment requirements of the Administrative Procedure Act.<sup>11</sup>

## List of Subjects in 37 CFR Part 203

Freedom of information.

## Final Regulations

For the reasons set forth above, the Copyright Office adopts the interim rule amending 37 CFR part 203 which was published at 82 FR 9505 on February 7, 2017, as amended by 83 FR 63064 on December 7, 2018, as final with the following changes:

## PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 1. The authority citation for part 203 continues to read as follows:

**Authority:** 5 U.S.C. 552.

■ 2. Amend § 203.7 by revising paragraph (c)(1)(i) introductory text to read as follows:

### § 203.7 Timing of responses to requests.

\* \* \* \* \*

(c) \* \* \*

<sup>9</sup> 5 U.S.C. 552a.

<sup>10</sup> See *Template for Agency FOIA Regulations*, <https://www.justice.gov/oip/template-agency-foia-regulations> (last updated Feb. 22, 2017).

<sup>11</sup> See *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) (“The critical feature of a procedural rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.”) (internal quotation marks omitted); 5 U.S.C. 553(b)(A) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

<sup>1</sup> 5 U.S.C. 552 (a)(1), (a)(4)(A)(i), and (a)(6)(E)(i).

<sup>2</sup> 82 FR 9505 (Feb. 7, 2017).

<sup>3</sup> Public Law 114–185, 130 Stat. 538 (2016).

<sup>4</sup> 82 FR at 9506 (Feb. 7, 2017).

<sup>5</sup> 83 FR 63061 at 63064–65 (Dec. 7, 2018).

<sup>6</sup> The comments can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/foia2016/>.

<sup>7</sup> NARA Comment at 1.

<sup>8</sup> Jenna Rainey Comment at 1.

(1)(i) Whenever the Office cannot meet the statutory time limit for processing a request because of “unusual circumstances,” as defined in paragraph (c)(2) of this section, the Office will notify the requester in writing of the unusual circumstances and the estimated date of determination, and alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services. Where an extension of time greater than 10 days is required, the Office will give the requester the opportunity to:

\* \* \* \* \*

#### **§ 203.10 [Amended]**

■ 3. Amend § 203.10 by removing “General Records Schedule 14” and adding in its place “General Records Schedule 4.2”.

■ 4. Amend § 203.11 by revising paragraphs (j) and (k) to read as follows:

#### **§ 203.11 Fees.**

\* \* \* \* \*

(j) *Other statutes specifically providing for fees.* The provisions of this section do not apply with respect to the charging of fees for which the copyright law requires a fee to be charged. Requests processed under the Privacy Act of 1974, 5 U.S.C. 552a, shall be subject to the fee schedule found in § 204.6 of this chapter. Fees for services by the Office in the administration of the copyright law are contained in § 201.3 of this chapter. In instances where records responsive to a request are subject to the statutorily-based fee schedule, the Office will inform the requester of the service and appropriate fee.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Office shall furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government

with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public’s understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public will be considered. The Office will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Office will consider the following criteria:

(A) The Office shall identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Office shall determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Office ordinarily will presume that when a news media requester has satisfied factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for

a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Office and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

Dated: January 28, 2019.

**Karyn A. Temple,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R05-OAR-2017-0212; FRL-9989-23-Region 5]**

### **Air Plan Approval; Wisconsin; Reasonable Further Progress Plan and Other Plan Elements for the Moderate Nonattainment Chicago Area for the 2008 Ozone Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of a revision to the Wisconsin State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nitrogen oxides (NO<sub>x</sub>) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is also finalizing approval of the 2017 and 2018 transportation conformity motor vehicle emissions budgets (MVEBs) for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. EPA proposed approval of these attainment planning elements on August 16, 2018,