Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Guntersville, AL [Amended]

Guntersville Municipal Airport-Joe Starnes Field, AL
(Lat. 34°24′22″ N, long. 86°15′39″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Guntersville Municipal Airport-Joe Starnes Field.

Issued in College Park, Georgia, on May 27, 2020.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–11710 Filed 6–2–20; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2020–10]

Modernizing Recordation of Notices of Termination

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

ACTION: Notice of Proposed Rulemaking; Notification of Inquiry.

SUMMARY: The United States Copyright Office is proposing to amend certain regulations governing the recordation of notices of termination. Along with a parallel rulemaking focused on modernizing document recordation in conjunction with development of the Office's online recordation system, the proposed amendments are intended to improve efficiency in the processing of such notices and to provide additional guidance to the public in this area. In addition, the Office is providing notice of changes to its examination practices for certain notices of termination that pertain to multiple grants, and soliciting public comment on two additional subjects of inquiry relating to notices of termination.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on July 6, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/recordation-modernization.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel, by email at *regans@copyright.gov,* Kevin R. Amer, Deputy General Counsel, by email at *kamer@copyright.gov,* or Nicholas R. Bartelt, Attorney-Advisor, by email at *niba@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

In 2017, the Office initiated a rulemaking to modernize its overall recordation process by updating regulations governing the submission of documents to the Office for recordation.[1] This regulatory update was initiated in anticipation of launching a fully electronic, online recordation system in the future. That system is currently under development, and a limited public pilot was launched in April 2020.

The Office is issuing this separate notice of proposed rulemaking (''NPRM'') to seek public comment on proposed updates to its regulations governing recordation of notices of termination.[2] Implementing these proposed amendments will update the regulatory framework for notices of termination before features permitting electronic submission of notices are developed for the online recordation system. In addition, this NPRM clarifies Office examination practices relating to notices of termination that contain multiple grants. Finally, the Office invites public comment on two subjects of inquiry: (1) Whether the Office should develop an optional form or template to assist remitters in creating and serving notices of termination; and (2) whether the Office should consider regulatory updates to address concerns about third-party agents failing to properly serve and file notices on behalf of authors.[3]

A. Current Rules and Practices for Recording Notices of Termination

In enacting the Copyright Act of 1976, Congress created a process for authors to reclaim previously-granted rights in their works by terminating grants after a period of years has elapsed. To do so, authors, or their heirs or duly authorized agents, must serve a notice of

[1] *See* Modernizing Copyright Recordation, 82 FR 52213 (Nov. 13, 2017).

[2] *See* 37 CFR 201.10.

[3] This notice is focused on proposed updates to Office practices for recording notices of termination, and is without comment upon congressional and public interest in other substantive issues concerning the termination statutes. *See, e.g.,* Hearing on Mark-up of H.R. 5283 before the H. Comm. on the Judiciary, 115th Cong. 45–46 (2018) (statement of Rep. Zoe Lofgren) (expressing support for expanding termination rights to legacy recording artists who contributed to pre-72 sound recordings); *id.* at 53 (statement of Rep. Sheila Jackson-Lee) (same); Moral Rights, Termination Rights, Resale Royalty, and Copyright Term: Hearing before the Subcomm. on the Courts, Intellectual Prop., & the internet of the H. Comm. on the Judiciary, 113th Cong. 2–4 (2014) (statements of Reps. Coble, Conyers, & Goodlatte) (discussing termination issues generally); U.S. Copyright Office, Analysis of Gap Grants under the Termination Provisions of Title 17 9 (2010) (''Gap Grant Analysis'') (highlighting termination issues raised by public commenters outside the focus of the gap grant analysis); Public Knowledge, Making Sense of the Termination Right: How the System Fails Artists and How to Fix It (Dec. 2019).

termination on the grantee not less than two or more than ten years before the effective date of termination stated in the notice.[4] The effective date of termination is a date selected by the author within a five-year window that is set by statute. For grants executed on or after January 1, 1978, the five-year window starts either 35 years from the date of execution or, if the grant covers the right of publication, 40 years from the date of execution or 35 years from the date of publication, whichever is earlier.[5] For grants executed before January 1, 1978, the five-year window begins 56 years from the date copyright was originally secured.[6] In addition, ''[a] copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect,'' and such ''notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.'' [7] More broadly, section 702 of the Act authorizes the Register of Copyrights to ''establish regulations . . . for the administration of the functions and duties made the responsibility of the Register under [title 17],'' and section 705(a) requires the Register to ''ensure that records of . . . recordations . . . are maintained, and that indexes of such records are prepared.'' [8]

In establishing regulations under this authority, the Office has long been of the view that the ''required contents of the notice must not become unduly burdensome to grantors, authors, and their successors,'' who may lack knowledge of certain information, such as the applicable dates.[9] Consistent with that understanding, and to the extent permitted by the statute, the Office generally seeks to avoid outright rejection of termination notices submitted for recordation on grounds of technical noncompliance with Office regulations. Instead, where possible, the Office will correspond with remitters to assist them in bringing deficient submissions into compliance with the relevant regulations—for example, by supplying required information omitted from the original submission. This general policy in favor of recordation is particularly appropriate in light of the asymmetrical consequences associated with the determination of whether or not to record a notice.[10] As the Office's regulations state, recordation is ''not a determination by the Office of the notice's validity or legal effect'' and ''is without prejudice to any party claiming that the legal or formal requirements for effectuating termination (including the requirements pertaining to service and recordation of the notice of termination) have not been met.'' [11] By contrast, a refusal to record can ''permanently invalidate a notice of termination that is otherwise legally sound,'' and thereby deprive the copyright owner of the ability to reclaim rights in her work.[12]

II. The Proposed Rule

After a review of the current regulatory framework in light of overall modernization efforts, the Office proposes several amendments and clarifications to its regulations governing notices of termination. The Office intends for these changes to facilitate recordation and compliance with regulatory requirements.

A. Timeliness

First, the Office proposes an amendment to restore its discretion to record certain untimely notices if equitable circumstances warrant. Until recently, the relevant language said that the Office ''reserves the right to refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice is untimely.'' [13] The current interim rule, promulgated in 2017 as part of the parallel rulemaking on modernizing document recordation, changed the provision to state that the Office ''will'' refuse such notices.[14] The notice announcing the rule did not discuss the basis for that change or state whether it was intended to narrow the Office's discretion in this area. In any event, the Office now proposes replacing ''will'' with ''may'' to account for the possibility that recordation may be warranted in certain cases even where the information available to the Office indicates that the notice is untimely. For example, if the effective date of termination appears to be outside the five-year termination window based on the date of execution provided, but there is reason to believe that the work may have been created at a later date such that the notice could in fact be timely based on the Office's treatment of ''gap grants,'' [15] it may be appropriate to record the notice to allow the relevant facts to be determined by a court if necessary. The Office believes it is appropriate to amend the regulatory language to ensure it has the flexibility to excuse untimeliness in cases where doing so would serve the interests of justice and be otherwise equitable, to the extent permitted by the statute.[16]

Second, the Office proposes a technical change to clarify an example provided in the regulations to illustrate when a notice may be untimely. The current regulations provide several examples of situations when a ''notice will be considered untimely.'' The interim rule included these examples to illustrate the types of errors that could lead to the Office refusing to record a notice on timeliness grounds. The examples were not, however, intended to outline the full range of situations where a notice would be untimely. One example of untimeliness added by the 2017 interim rule is where ''the date of recordation is *after* the effective date of termination.'' [17] This language may cause confusion because the relevant statutory provisions—sections 203(a)(4)(A) and 304(c)(4)(A)—provide that ''[a] copy of the notice shall be recorded in the Copyright Office *before* the effective date of termination, as a

[4] *See* 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

[5] *See id.* at 203(a)(3).

[6] *See id.* at 304(c)(3).

[7] *Id.* at 203(a)(4), 304(c)(4). These provisions also apply to section 304(d)(1), another termination provision, which incorporates section 304(c)(4) by reference. *Id.* at 304(d)(1).

[8] *Id.* at 702, 705(a).

[9] Termination of Transfers and Licenses Covering Extended Renewal Term, 42 FR 45916, 45918 (Sept. 13, 1977) (''[W]e remain convinced that the required contents of the notice must not become unduly burdensome to grantors, authors, or their successors, and must recognize that entirely legitimate reasons may exist for gaps in their knowledge or certainty.''); *id.* at 45917 (''The preparation of notice[s] of termination will be occurring at a time far removed from the original creation and publication of the work and, in many cases, will involve successors of original authors having little, if any, knowledge of the details of original creation or publication.''); *id.* at 45918 (recognizing that ''it will commonly be the case that the terminating author, or the terminating renewal claimant . . . will not have a copy of the grant or ready access to a copy'').

[10] The Office previously observed that adopting a permissive recordation policy is consistent with the statutory purpose of allowing authors to exercise their termination rights. *See* Gap Grant Analysis at 3 (citing H.R. Rep. No. 94–1476, at 124 (1976); S. Rep. No. 94–473, at 108 (1975)).

[11] 37 CFR 201.10(f)(4); *see Ray Charles Found.* v. *Robinson,* 795 F.3d 1109, 1117–18 (9th Cir. 2015) (noting that validity and effect of notices can only be determined by a court of law, not the Copyright Office).

[12] Gap Grant Analysis at ii n.3.

[13] *See* Recordation of Notices of Termination of Transfers and Licenses; Clarifications, 74 FR 12554, 12556 (Mar. 25, 2009).

[14] 82 FR at 52220.

[15] *See* 37 CFR 201.10(f)(1)(ii)(C) (permitting termination under section 203 of a pre-1978 agreement to grant a work created after January 1, 1978 ''if [the notice] recites, as the date of execution, the date on which the work was created'').

[16] By contrast, in cases where a notice of termination is received by the Office on or after the effective date of termination, the statute itself appears to prohibit the Office from recording the notice as a notice of termination. *See* 17 U.S.C. 203(a)(4)(A) (''A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.''), 304(c)(4)(A) (same).

[17] 37 CFR 201.10(f)(1)(ii)(A) (emphasis added).

condition to its taking effect.'' [18] To clarify that submitting a notice for recordation *on* the effective date of termination would also be untimely under the statutory provisions, the Office proposes amending the example to provide that a date of recordation ''on or'' after the effective date of termination will be considered untimely.

B. Harmless Errors

The Office's regulations include a ''harmless errors'' exception providing that defects in a notice that ''do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 203, 304(c), or 304(d), whichever applies, shall not render the notice invalid.'' [19] Case law indicates that this provision may apply to any ''immaterial'' error in a notice, such as providing incorrect addresses or failing to include specific identifying information about each work.[20] The touchstone of whether an error is ''harmless'' is its ''materiality,'' which ''[is] to be viewed through the prism of the information needed to adequately advance the purpose sought by the statutory termination provisions themselves''—that is, balancing protection of authors' opportunity to reclaim their rights against grantees' interest in receiving sufficient notice of how their rights will be affected.[21]

In addition to this general ''harmless errors'' provision, the regulations list several specific types of errors that are considered harmless under the rule, provided ''the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.'' [22] These include errors in identifying the date of registration or registration number, listing the names of the author's heirs, or describing the precise relationships between the author and his or her heirs.[23] The regulations also specifically encompass errors in ''[t]he date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant.'' [24]

In contrast, failing to provide complete date and manner of service information (the ''statement of service'') is a violation of Office regulations that is not currently subject to the harmless error rule. The current regulations mandate that a notice submitted for recordation ''must be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice.'' [25] This requirement is a procedural rule established by the Office for recordation, rather than statutorily-mandated component of a valid notice. It is not subject to the harmless error rule because that rule only applies to ''errors in a notice,'' including omissions of information from the notice,[26] and the statement of service is not necessarily contained in the actual notice, as it can be provided separately.

The Office believes that errors in complying with its regulations should be evaluated by the same harmless error standard as errors in complying with the statutory requirements: So long as an error does not materially affect the adequacy of the notice, it should not render the notice invalid.[27] The Office therefore proposes broadening the harmless error rule beyond errors in a notice to also apply to remitters' compliance with any Office-promulgated recordation requirement for notices. This revision would permit the Office to treat missing or incomplete service information the same as errors in a notice—that is, as harmless error when a remitter does not know or is unable to reasonably determine this information.

C. Manner of Service

The current regulations provide that service of a notice of termination upon a grantee may be accomplished by personal service or by first class mail.[28] The Office proposes amending its regulations to clarify that acceptable manners of service also include delivery by courier services (*e.g.,* FedEx, UPS, DHL). In addition, the Office proposes permitting service by email, provided the recipient expressly consents to service in this manner.[29] These proposed amendments recognize modern, alternative methods of service to increase efficiencies for both remitters and grantees. The Office recently took similar action to allow remitters to submit notices of termination for recordation by the Office ''electronically in the form and manner prescribed in instructions on the Office's website.'' [30]

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[18] 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A) (emphasis added).

[19] 37 CFR 201.10(e)(1).

[20] *See Horror Inc.* v. *Miller,* 335 F. Supp. 3d 273, 319–20 (D. Conn. 2018) (finding incorrect addresses in a notice to be harmless error and interpreting the requirement to ''reasonably identify'' the work broadly); *Siegel* v. *Warner Bros. Entm't,* 658 F. Supp. 2d 1036, 1091–95 (C.D. Cal. 2009) (finding failure to include information about two weeks of comics was harmless error given the totality of information provided in the notice, including a ''catch-all'' clause).

[21] *Siegel* v. *Warner Bros. Entm't,* 690 F. Supp. 2d 1048, 1052 (''*Siegel II*''); *see also Mtume* v. *Sony Music Entm't,* 18 Civ. 6037(ER), 2019 WL 4805925, at *4 (S.D.N.Y. Sept. 30, 2019) (citing *Siegel II* and explaining the competing objectives of the statutory termination provisions).

[22] 37 CFR 201.10(e)(2) (''Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.''); *see Johansen* v. *Sony Music Entm't Inc.,* 19 Civ. 1094, 2020 WL 1529442, at *7 (Mar. 31, 2020) (noting that ''the examples recited in § 201.10(e)(2) were not meant to define or otherwise set strict parameters on the circumstances where the general harmless error rule in § 201.10(e)(1) is applicable'').

[23] 37 CFR 201.10(e)(2).

[24] *See id.* at 201.10(b)(2)(iii), (e)(2); *Mtume,* 2019 WL 4805925, at *4 (finding that although the date of execution provided in the notice ''cannot be the date of creation for at least one of the works,'' ''this date—to the extent it is incorrect—may be harmless error'').

[25] 37 CFR 201.10(f)(1)(i)(B).

[26] *See id.* at 201.10(e)(1). Recently, courts have held that the omission of certain information from the notice may be harmless in particular circumstances. *See Waite* v. *UMG Recordings, Inc.,* 19–cv–1091, 2020 WL 1530794, at *7–8 (Mar. 31, 2020) (finding omission of the dates of execution for the relevant grants and listing incorrect dates for the agreements governing the grants to be harmless errors under the general provision because ''defendant has sufficient notice as to which grants and works plaintiffs seek to terminate'' and ''possesses the relevant agreements and can discern the relevant dates''); *Johansen,* 2020 WL 1529442, at * 6–7 (concluding that the general harmless error provision encompasses omission of specific dates of execution where ''notices clearly identified the publication dates of the sound recordings at issue, as well as their authors, their titles, their copyright registration numbers and their effective dates of termination,'' such that the ''notices provide [grantee] with ample information to identify the grants'').

[27] In fact, the initial harmless error provision was adopted after public commenters proposed it as a guardrail against ''fatal slips'' in complying with the Office's regulations governing notices. *See* 42 FR at 45919 (citing comments submitted by the Authors League of Am., Inc. and Joint Reply Comments from the Authors League, National Music Publishers' Assoc., Inc., Am. Guild of Authors and Composers, Columbia Pictures Indus., Inc., MGM, Inc., Paramount Pictures Corp., Twentieth Century-Fox Film Corp., United Artists Corp., and Warner Bros. Inc.).

[28] 37 CFR 201.10(d)(1), (f)(1)(i)(B). These methods of service remain unchanged since the Office first adopted regulations governing notices of termination. *See* 42 FR at 45920.

[29] The Office has adopted a similar approach in service of notice of intention to obtain a compulsory license for making and distributing phonorecords under 17 U.S.C. 115. *See* 37 CFR 201.18(a)(7), (f)(6) (permitting service by electronic transmission in certain circumstances, including where a party has consented to accept service by email); *see also* Mechanical and Digital Phonorecord Delivery Compulsory License, 79 FR 56190, 56197 (Sept. 18, 2014).

[30] 37 CFR 201.1(c)(2).

D. Identification of a Work

Under the current regulations, remitters must clearly identify the title of each work to which the notice of termination applies. Providing a registration number is not required, but is encouraged ''if possible and practicable.'' [31] To further encourage remitters to identify works in notices by registration number, the Office proposes amending the regulations to permit identification of a work by providing: (a) The title, (b) the original copyright registration number assigned by the Office, or (c) both pieces of information. This approach promotes specificity when identifying works while still allowing remitters flexibility in method of identification. It is also the standard for how works may be identified in documents that are recorded under section 205 of the Act.[32] It should be noted, however, that if a work is identified only by registration number in a notice and there is an error in the number, the error may materially affect the adequacy of the information, which, in turn, may affect the validity of the notice. Accordingly, the Office recommends providing both the title and registration number where possible.

E. Date of Recordation

Current regulations set the date of recordation for a notice of termination as the date when ''all of the elements of required for recordation, including the prescribed fee and, if required, the statement of service'' are received by the Office.[33] This rule harmonizes with the Office's method of determining the date of recordation for transfers of ownership and other documents pertaining to copyright that are recorded under section 205 of the Act.[34] Similarly, registration applications are assigned an effective date of registration, which is set by statute as ''day on which an application, deposit, and fee . . . have all been received by the Office.'' [35]

Although the rule linking the date of recordation to the receipt of a complete submission has remained essentially unchanged since implemented in 1977, the Office has taken a fresh look at this requirement and determined that it should be relaxed to mitigate the harsh consequences that can result where a submission is missing certain required elements. While many types of clerical filing errors in notice submissions can be corrected without prejudice to the grantee, a change to the date of recordation resulting from the correction can have severe repercussions for the grantor. For example, if a grantor properly serves a notice on the grantee but fails to include a statement of service in the recordation submission to the Office, the grantor could correct this oversight by later submitting the statement of service. Under current regulations, however, the date of recordation would become the date the statement of service was received, not the date the Office first received the notice. Where the effective date of termination has already passed before the submission is corrected, the notice would be untimely because the statute requires that notices be recorded *before* the effective date of termination.[36] In that circumstance, assuming at least two years remained in the termination window, the grantor would have to amend the notice by selecting an effective date of termination at least two years later, and serve and file that amended notice. But if the untimely notice was rejected by the Office within the final two years of the five-year window, the grantor would be unable to choose a different valid effective date and would lose the opportunity to terminate altogether.

Given these potentially severe consequences, current Office practice permits remitters to address certain non-material errors or omissions in notices submitted for recordation by providing information via correspondence with the Office, rather than requiring remitters to amend, re-serve, and re-file the notice.[37] For example, a notice terminating a grant under section 203 may indicate that the grant included the right of publication, but omit the date of publication, in which case the Office would correspond to obtain that date to determine the applicable five-year window. In such instances, Office practice has been to allow remitters to retain their original date of recordation after the Office receives sufficient information to determine that the notice may be recorded as originally submitted. The Office believes that this practice should be extended to other non-material errors, including specifically to situations in which the remitter has failed to provide the prescribed fee or the statement of service.[38] The Office therefore proposes amending the regulations to set the date of recordation as the date when the notice is received by the Office.

Although this approach would differ from the method of assigning a date of recordation for other types of documents, the Office believes this distinction is appropriate in light of key differences between the recordation of notices of termination and the recordation of other documents pertaining to copyright. In the context of termination notices, it is a statutory requirement that grantees receive *actual* notice before a copy of the notice is recorded with the Office.[39] Because of this, the availability of the notice in the Office's public records is unnecessary to ensure that a grantee has adequate notice of the author's intention to terminate. Indeed, the notice could be recorded years after the grantee was served so long as it is received by the Office before the effective date of termination. In contrast, there is no statutory requirement that parties affected by transfers of ownership or other documents recorded under section 205 receive actual notice.[40] Therefore, for those types of documents, the constructive notice that is imputed from the date of recordation by the Office may have greater significance for affected parties than is the case in the termination context.[41]

III. Examination Practices for Notices Relating to Multiple Grants

In recent years, the Office began receiving notices of termination relating to multiple grants, that is, notices that seek to terminate: (a) More than one grant between the same parties (*e.g.,* one grantor seeks to terminate multiple, separate grants to the same grantee(s)), or (b) more than one grant relating to the same work(s) (*e.g.,* one grantor seeks to

[31] *Id.* at 201.10(b)(1)(iii), (2)(iv).

[32] *See* 17 U.S.C. 205(c) (constructive notice of a recorded document attaches if, after being indexed by the Office, ''the document, or material attached to it, . . . would be revealed by a reasonable search under the title or registration number of the work''); Copyright Office Fees, 85 FR 9374, 9383–84 (Feb. 19, 2020) (adjusting fee structure for recordation of documents, including notices of termination, to calculate one ''work'' as the title, registration number, or both).

[33] 37 CFR 201.10(f)(3).

[34] *Id.* at 201.4(a) (''The date of recordation is when all the elements required for recordation, including a proper document, fee, and any additional required information, are received in the Copyright Office.''). As originally implemented, the Office only required the ''proper document'' and fee be received by the Office. *See* 43 FR 771, 772 (Jan. 4, 1978).

[35] 17 U.S.C. 410(d).

[36] *See id.* at 203(a)(4)(A), 304(c)(4)(A). Similarly, under the current rule, a remitter could submit an otherwise timely and materially adequate notice for recordation, but with the improper fee. If not corrected until after the effective date of termination, the submission would be untimely.

[37] *Cf.* 37 CFR 201.10(e) (providing exceptions for harmless errors).

[38] The proposed change that date of recordation no longer be conditioned upon receipt of the prescribed fee is subject to change if the Office experiences administrative hardship from remitters withholding fees until requested or otherwise delaying payment in a way that affects the Office's receivables.

[39] *See* 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

[40] *See id.* at 205.

[41] *See id.* at 205(c).

terminate separate grants to multiple grantees for the same work(s)). The Office has not previously provided guidance about recording notices that pertain to multiple grants. And in some cases, the Office has declined to record such notices, requiring that notices pertain to a single grant. To promote consistency and dispel confusion about whether remitters may record notices pertaining to multiple grants, the Office takes this opportunity to clarify its practices.

After taking a fresh look at the issue, the Office concludes that there is nothing in the statute or current regulations barring notices covering multiple grants.[42] Accordingly, notices with multiple grants will generally be recorded as a matter of convenience for authors seeking to reclaim their rights. The Office, however, will not record notices involving multiple grants where there is no overlap of either a grantee or a work across the various grants. In other words, a grantor may not use one notice to terminate multiple grants where each grant involves a different work and different grantee(s). Notices structured in this way would likely be administratively burdensome for the Office to examine and process because they would effectively merge multiple notices into one document. The current fee charged for recording a notice of termination is based upon the staff resources required to examine and index a single notice. While examination of a notice relating to multiple grants may require greater resources than examination of a single grant, the Office expects the additional burden to typically be limited where the grants contain commonalities either as to the grantees or the works. By contrast, recording notices containing wholly unrelated multiple grants would likely demand more significant additional resources and, consequently, decrease overall processing efficiency.

Accordingly, at this time, no additional fee will be charged for processing notices relating to multiple grants. The Office intends to track the volume of notices with multiple grants that are submitted, how many grants are included per notice, and how much longer these notices take to process, to determine whether processing time has increased due to the need to examine and index each grant in separate records. Using that information, the Office can reach an informed decision about whether or not to adopt any additional fee for notices involving multiple grants.

IV. Additional Subjects of Inquiry

In addition to the foregoing proposed regulatory changes and clarification of examination practices, the Office solicits public comment on the following additional topics related to notices of termination.

A. Sample Form or Template for Notices of Termination

The Office currently does not provide forms for use in preparing and serving notices of termination.[43] Previously, in a 2002 notice of proposed rulemaking, the Office sought public comment on ''whether the Office should provide official forms for notices of termination of transfers and licenses under sections 203, 304(c) and 304(d), and whether the use of such forms should be made mandatory.'' [44] In the notice, the Office cited the potential benefits of facilitating Office processing of notices and promoting compliance with statutory and regulatory requirements.[45] No comments were received, and provisions relating to forms were not included in the final rule.[46]

In light of its IT modernization efforts, the Office again invites public comment on whether it would be beneficial for the Office to develop an optional sample form or other template for notices of termination, such as an online notice builder. The Office also invites comment on any specific features that should be included in such an option. These comments will be considered in future phases of recordation development and may also be used in developing updated guidance documents for the public unconnected to IT systems, including circulars, the *Compendium of U.S. Copyright Office Practices,* and online instructional materials.

B. Third-Party Agents

As is true of many types of filings with the Copyright Office, authors sometimes entrust third-party agents to create, serve, and file notices of termination on their behalf. Although notices filed by third-party agents are generally recorded without incident, the Office understands that, in some instances, third-party agents have failed to comply with the statutory and regulatory requirements for recordation. If third-party agents do not timely communicate problems with recordation of notices to their clients, authors' termination rights may be jeopardized or extinguished altogether, depending on when these issues occur and are discovered relative to the five-year termination window.

The Office seeks public comment on whether these concerns could be addressed through regulatory updates, and if so, what specific changes should be considered. In addressing this issue, commenters should be mindful that the Office is generally seeking to make compliance with its regulations and practices less onerous and more flexible for remitters, and to increase efficiency in the recordation process. Commenters should consider whether imposing additional requirements to protect against errors or abuses by third-party agents is compatible with those goals. Likewise, commenters may consider the effect of any proposed change on the ability of authors to engage agents to limit the disclosure of personally identifiable information in the public record.

IV. Conclusion

In furtherance of the Office's modernization efforts, the proposed amendments will facilitate recordation of notices of termination by easing compliance with requirements established by the Office. The Office invites public comment on this proposal and on the subjects of inquiry discussed above.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.10 [Amended]

■ 2. Amend § 201.10 as follows:
■ a. In paragraph (b)(1)(iii):
■ i. Remove ''and, if possible and practicable, the original copyright registration number;''
■ ii. Add ''or the original copyright registration number, or both, if possible and practicable,'' after ''The title'';
■ b. In paragraph (b)(2)(iv):

[42] Notably, section 203(b) states that ''[u]pon the effective date of termination, all rights under this title that were covered by the terminated *grants* revert . . . .'' The references to the ''effective date'' in the singular and ''grants'' in the plural could be read to implicitly anticipate multiple grants in a single notice. But given that the rest of section 203, and all of sections 304(c) and (d), refer to a ''grant'' in the singular, this one pluralization seems far from definitive.

[43] *See* 37 CFR 201.10(a).

[44] Notice of Termination, 67 FR 77951, 77953 (Dec. 20, 2002).

[45] *Id.*

[46] Notice of Termination, 68 FR 16958, 16959 (Apr. 8, 2003).

■ i. Remove ''and, if possible and practicable, the original copyright registration number;''
■ ii. Add ''or the original copyright registration number'' after ''the title'';
■ iii. Add '', or both, if possible and practicable,'' after ''the work'';
■ c. In paragraph (d), add ''or by reputable courier service delivered'' after ''by first class mail sent'' and add '', or by means of electronic transmission (such as email) if the grantee expressly consents to accept service in this manner'' after ''grantee or successor in title''.
■ d. In paragraph (e)(1), add ''preparing, serving, or seeking to record'' after ''Harmless errors in'' and add ''or that do not materially affect, in the Office's discretion, the Office's ability to record the notice'' after ''whichever applies,'';
■ e. In paragraph (e)(2), remove ''or registration number'';
■ f. In paragraph (f)(1)(ii)(A), remove ''will'' from the first sentence and add in its place ''may'', remove ''will'' from the second sentence and add in its place ''may'', and add ''on or'' after ''the date of recordation is''; and
■ g. In paragraph (f)(3), remove ''all of the elements required for recordation, including the prescribed fee and, if required, the statement of service, have been'' and add in its place ''the notice of termination is''.

Dated: June 1, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–12038 Filed 6–2–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 42, and 52

[FAR Case 2019–004, Docket No. FAR–2019–0030, Sequence No. 1]

RIN 9000–AN87

Federal Acquisition Regulation: Good Faith in Small Business Subcontracting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2017, which requires examples of failure to make good faith efforts to comply with a small business subcontracting plan.

DATES: Interested parties should submit written comments at the address shown below on or before August 3, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–004 to *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2019–004''. Select the link ''Comment Now'' that corresponds with FAR Case 2019–004. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2019–004'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FAR Case 2019–004 in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at (703)605–2815, or by email at *malissa.jones@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2019–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement section 1821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (15 U.S.C 637 note, Pub. L. 114–328). Section 1821 requires the Small Business Administration (SBA) to amend its regulations to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. SBA issued a rule at 84 FR 65647, November 29, 2019, to implement section 1821 of the NDAA for FY 2017. In its rule, SBA amends 13 CFR 125.3(d)(3) to provide guidance on evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan and a list of examples of activities reflective of a failure to make a good faith effort.

Additionally, SBA revised 13 CFR 125.3(c)(1)(iv) to require that prime contractors with commercial subcontracting plans include indirect costs in their subcontracting goals. Other than small business concerns that have a commercial subcontracting plan report on performance through a summary subcontract report (SSR). SBA's regulations currently require that contractors using a commercial subcontracting plan must include indirect costs in their SSRs, but do not require these contractors to include indirect costs in their subcontracting goals, which leads to inconsistencies when comparing the data reported in the SSR to the goals in the commercial subcontracting plan.

Small business subcontracting plans are required from large prime contractors when a contract is expected to exceed $700,000 ($1.5 million for construction) and has subcontracting possibilities. FAR 19.704 lists the elements of the plan, which include the contractor's goals for subcontracting to small business concerns and a description of the efforts the contractor will make to ensure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts. Failure to make a good faith effort to comply with the plan may result in the assessment of liquidated damages per FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

II. Discussion and Analysis

The proposed changes to the FAR are summarized in the following paragraphs.

A. Inclusion of Indirect Costs in Commercial Plans

Section 19.704, Subcontracting plan requirements, and the clause at 52.219–9, Small Business Subcontracting Plan, are amended to require that all indirect costs, with certain exceptions, are included in commercial plans and SSRs.

B. Compliance With the Subcontracting Plan

Section 19.705–7, Liquidated damages, is renamed ''Compliance with the subcontracting plan'' and is reorganized, with paragraph headings