

(2) *Enforcement period.* This rule is effective and will be enforced from 7 a.m. on June 6, 2011 to 7 a.m. on June 9, 2011.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, mooring or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port (COTP) Boston, or the designated on-scene representative.

(2) The “on-scene representative” is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP Boston to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–5750 (Sector Boston command center) to obtain permission to do so.

(4) Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or the designated on-scene representative.

(5) Notice of suspension of enforcement: The COTP Sector Boston may temporarily suspend enforcement of the safety zone. If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to affect the widest publicity among the affected segments of the public. Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

Dated: May 24, 2011.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2011–13838 Filed 6–3–11; 8:45 am]

**BILLING CODE 9110–04–P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2010–5]

#### Gap in Termination Provisions

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

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office is amending its regulations governing notices of termination of certain grants of transfers and licenses of copyright under section 203 of the Copyright Act. The amendments are intended to clarify the recordation practices of the Copyright Office regarding the content of certain notices of termination, and the circumstances under which such notices will be accepted by the Office. In particular, they clarify that the Copyright Office will record section 203 notices of termination of grants for works created after 1977 even when the agreement to make a grant was made before 1978.

**DATES:** Effective Date: June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:**

David O. Carson, General Counsel, P.O. Box 70400, Washington, DC 20024.

*Telephone:* (202) 707–8380. *Telefax:*

(202) 707–8366. All prior **Federal Register** notices and public comments in this docket and a related inquiry are available at <http://www.copyright.gov/docs/termination>.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Copyright Act gives authors (and some heirs, beneficiaries and representatives who are specified by statute) the right to terminate certain grants of transfers or licenses within the time frames set forth in the statute and subject to the execution of certain conditions precedent. Termination rights (also referred to as “recapture rights”) are equitable accommodations under the law. They allow authors or their heirs a second opportunity to share in the economic success of their works. These termination rights are codified in sections 203, 304(c), 304(d) and 203 of Title 17 of the United States Code. They do not apply to copyrights in works made for hire or grants made by will. Sections 304(c) and 304(d) establish termination rights for works that had subsisting copyrights on January 1, 1978, the effective date of the 1976 Copyright Act. Section 203, which is the subject of this rulemaking, establishes termination rights for works subject to grants of transfers or licenses made on or after the effective date of the 1976 Copyright Act, but only to the extent they were executed by the author.

The current rulemaking addresses a narrow fact pattern that was also the subject of a related notice of inquiry published March 29, 2010. (75 FR 15390). Through the notice of inquiry, the Office sought comments as to whether or how the termination provisions apply in circumstances where an author agreed to make a grant

prior to January 1, 1978, but the work in question was created on or after January 1, 1978—circumstances raised by some authors and songwriters and their representatives in discussions with the Copyright Office and some congressional offices. Such grants are sometimes called “Gap Grants” in light of a perception that in creating the section 304 termination process and the section 203 termination process, as described above, Congress may have created a “gap” by failing to address circumstances in which authors (or would-be authors) agreed to make grants prospectively, before January 1, 1978, for works they did not create until on or after that date.

In response to the Notice of Inquiry seeking comments on the so-called “gap,” the Copyright Office received sixteen initial comments and nine reply comments. These comments are available online on the Copyright Office Web site, at <http://www.copyright.gov/docs/termination/>. Most concluded that the termination right provided in section 203 of the Copyright Act is applicable to Gap Grants as currently codified, reasoning that a grant is not fully executed under the law until the relevant work has been created. Multiple commenters expanded on this point, observing, in turn, that there can be no author, no copyright interest and no grant of copyright under Title 17 until there is first a work of authorship. One comment, however, urged caution, questioning whether, at least in the case of written grants, Congress intended the date of execution for the purposes of section 203 to mean the date the grant was signed. This view could not apply to grants made orally, but it would mean section 203 cannot apply to any fact patterns in which grants are executed in writing and signed prior to January 1, 1978.

Based on the comments received and its own analysis, the Copyright Office concluded that the better interpretation of the law is that Gap Grants *are* terminable under section 203, as currently codified, because as a matter of copyright law, a transfer that predates the existence of the copyrighted work cannot be effective (and therefore cannot be “executed”) until the work of authorship (and the copyright) come into existence. In arriving at this conclusion, the Copyright Office looked at the plain meaning of Title 17, including section 203, as well as the legislative history of the termination provisions. It also considered transfer of copyrights and renewal rights under common law, prior to enactment of the termination provisions. *See Analysis of Gap Grants Under the Termination*

*Provisions of Title 17* (December 7, 2010), available at <http://www.copyright.gov/reports/gap-grant%20analysis.pdf> (hereinafter the "December Analysis").

In the December Analysis, the Copyright Office also concluded that legislation to clarify the statute would be beneficial, not only to better achieve the policy objectives for book authors, songwriters and other intended beneficiaries of the provision, but in order to provide confidence and certainty for publishers and other grantees with respect to copyright title, transfers and licensing transactions in the marketplace. *Id.* And the Office acknowledged that its own recordation practices required clarification, so that stakeholders would know whether and how to timely record termination notices pertaining to gap grants. *Id.*

The Office's recordation practices are the focus of the current rulemaking, initiated in a notice of proposed rulemaking published in November. 75 FR 72771 (November 26, 2010). In the notice of proposed rulemaking, the Office stated its current practices, which permit the recordation of a notice of termination under section 203 when the notice states that the grant was executed on a specified date that is on or after January 1, 1978. It observed that a person serving and submitting a notice of termination based on the rationale described above would be justified in including in the notice, as the date of execution of the grant, the date that the work was created, and that for purposes of clearly identifying the grant being terminated, it may be useful (in the case of written grants) also to state the date the grant was signed. Such recordation by the Office would be without prejudice as to how a court might ultimately rule on whether the document is a notice of termination within the scope of section 203. *See* 37 CFR 201.10(f)(5).

The notice of proposed rulemaking sought comment on amendments to Copyright Office regulations that would clarify that, consistent with existing recordation practices, the Office reserves the right to refuse a document for recordation as a section 203 notice of termination if the date of execution of the grant, as reflected in the document submitted as a notice of termination, falls before January 1, 1978. The notice proposed an amendment to the existing regulations on notices of termination that would clarify certain circumstances under which, based on certain procedural failures drawn from the clear language of the Copyright Act, the Office will refuse to index as notices of termination documents submitted

under section 203. These circumstances included a recital in a notice of termination of a date of execution of the grant that falls before January 1, 1978 (as discussed above), an effective date of termination that does not fall within the allowed statutory period (17 U.S.C. 203(a)(3)), improperly timed service of the notice of termination (17 U.S.C. 203(a)(4)(A)), or submission of documents for recordation as notice of termination on or after the effective date of termination (17 U.S.C. 203(a)(4)(A)).

Specifically, the notice of proposed rulemaking proposed to amend § 201.10(f)(4) of the Copyright Office regulations, which currently provides that the Copyright Office reserves the right to refuse recordation of a notice of termination if, in the judgment of the Copyright Office, such notice of termination is untimely, by adding the following language: "Conditions under which a notice of termination will be considered untimely include: The date of execution stated therein does not fall on or after January 1, 1978, as required by section 203(a) of title 17, United States Code; the effective date of termination does not fall within the five-year period described in section 203(a)(3) of title 17, United States Code; or the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination."

The effect of the proposed amendment would have been that if a notice of termination of a Gap Grant provided, as the date of execution of the grant, a date on or after January 1, 1978, the Office would record the notice as a notice of termination under section 203. The Office would not question that date even if it knew that an agreement to grant the transfer or license was signed before January 1, 1978, since there would be legitimate grounds to conclude that the grant could not actually have been "executed" until the work that was the subject of the grant had been created.

#### Comments

The Office received seven comments in response to the notice of proposed rulemaking. All of the commenters expressed support for the general proposition that the Office should record notices of termination of Gap Grants, although not all necessarily agreed that such notices actually meet the requirements for notices of termination under section 203.

Most groups representing authors and performers who submitted comments generally supported the proposed rule, although some proposed more extensive

regulation. The Future of Music Coalition characterized the proposal as "an appropriate compromise to facilitate the notice of termination filing requirements for Gap Grants," but noted that "this rulemaking is not a substitute for statutory clarification." It noted that under an approach that bases the date of execution of a grant upon the date the work was created, there may be difficulties in establishing the actual date of creation of the work and noted that an approach that considers the date of creation to be the date of execution would be less friendly to authors, especially when individual contracts apply to works created piecemeal or involve the transfer of multiple future works.

In a jointly filed comment, The Authors Guild and the Songwriters Guild of America endorsed the Copyright Office's December Analysis as well as the proposed regulation, but suggested a further amendment that would affirmatively state that the Office will record notices of termination of Gap Grants under section 203. They proposed the following language: "Notices of termination for works created on or after January 1, 1978, the grants of transfers and licenses of copyrights for which were entered into before January 1, 1978, will be accepted under section 203."

Attorney Casey del Casino's comment characterized the proposed regulation as "an important step in addressing and attempting to correct what is clearly an oversight on the part of Congress with respect to so-called 'gap works,'" but noted that "the use of the date of creation in the proposed rule change, while doctrinally sound, may in reality be problematic" because the date of creation of a work is not always easy to ascertain, especially if the specific date of creation must be recited in the notice of termination. He suggested that the problem could be ameliorated if only the year of creation must be provided. Alternatively, he suggested that when the date of creation is unknown or unascertainable, it should be sufficient to provide the date of publication, a date which is generally easier to determine. Karyn Soroka of Soroka Music Ltd. offered a similar comment.

Attorneys Michael Perlstein, Bill Gable and Kenneth Freundlich also expressed concern about practical difficulties likely to generate litigation if further clarification could not be achieved through legislation or "best practices," noting that "neither authors nor their grantees (e.g. publishing companies) were ever on notice that they needed to retain documents evidencing date of creation (as

distinguished from date of delivery, for example), and that even if such documents may once have existed neither party often will have preserved them." They therefore proposed guidelines that they characterized as "author-friendly, consistent with legislative and judicial intent that authors and their heirs benefit from the termination statutes." These guidelines proposed a hierarchy of five criteria to be used to determine the date of execution of a grant, culminating in a default rule for unpublished works with no registered copyright and no author-provided proof of creation. In such cases, there would be a rebuttable presumption the work was created (which thereby executed the grant) on the statutorily fixed date of January 1, 1978.

Those representing grantees of rights also supported the Office's proposal to amend its regulations to make clear that the Office will record notices of termination of Gap Grants, but they sought additional amendments that they believe would make it clearer that recordation does not mean the notices are legally valid. In other words, they argued that the Office should take care to articulate that its acceptance and recordation of Gap Grants under section 203 is without prejudice to a court ruling that Gap Grants are not terminable as a matter of law.

For example, the Software and Information Industry Association (SIIA) stated that the better practice would be for the Copyright Office to leave any merits-based evaluation to the courts and suggested that the amended regulation clarify that the Office's decision to record such terminations has been made simply to help preserve the filing party's rights, reserving the ultimate determination of the issue for the courts. While acknowledging that the Office has concluded that there are legitimate grounds to conclude that Gap Grants may be terminated under section 203 because they could not have been "executed" before the works subject to the grants were actually created, SIIA requested that the amended regulation make clear that "there are also legitimate grounds to assert that in the case of a grant signed (or, in the case of an oral license, agreed to) before January 1, 1978 regarding rights in a work not created until January 1, 1978 or later, such a grant was 'executed' on the date such grant was signed and that the termination provisions of section 203 of Title 17 do not apply to any such grants"; that "the Copyright Office was not and is not making any merit-based evaluation of the arguments either way"; and that the regulation "simply would

act to help preserve the filing party's rights, reserving the ultimate determination of the issue for the courts." SIIA Comment at 2.

The Recording Industry Association of America (RIAA) raised the same point as SIIA, as well as a finer point the Office had not previously considered. It observed that the proposed amendment would recite the Copyright Office's right to refuse to record a notice of termination if, in the judgment of the Office, the notice is untimely, but also would treat the recital by an author of the date of execution (in the notice of termination itself) as an issue relating to timeliness of the notice. As a result, the Office's act of recording a notice of termination of a Gap Grant could be construed as a judgment by the Office that the particular notice is timely. Having defined the issue of date of execution of the grant as an issue relating to timeliness of the notice, the effect of the regulation might be to give the Office's judgment as to timeliness in such cases greater weight than the Office intended.

#### Discussion

The Copyright Office recognizes the practical concerns raised by some commenters with respect to establishing an effective date of execution based on the date of creation of a work. How does one recall and prove the date of creation, especially in the absence of supporting documentation? The task is obviously challenging, but it is not unique to Gap Grants and it is not new. For example, authors who wish to terminate oral agreements (grants of nonexclusive rights do not require a signed writing) must reconstruct dates from memory or supporting conduct or documentation. To be clear, the Copyright Office is not suggesting that requiring authors to reconstruct precise dates decades after the fact is an optimal policy solution; it is merely pointing out that the challenges exist irrespective of Gap Grant scenarios. Indeed, as noted in the December Analysis, the challenges will be ongoing for purposes of section 203. That is, in every instance where a grant of rights has been or will be made prospectively, whether in writing or orally, the author will need to determine the date of execution of the grant separately from the date the grant was initiated, in order to secure an effective date of termination. This would seem to be a particular problem for grants that did not or will not cover the publication right, although this too is not entirely clear. When the grant covers the publication right, section 203 allows for termination during a 5-year window commencing 35 years from publication

or 40 years from the date of execution of the grant, whichever is sooner. Thus the question: can an author perform the statutory calculation if she cannot ascertain both a date of execution of the grant and (if the work was published) a publication date?

The proposals of some commenters were aimed at simplifying the practical challenges noted above and providing guidance to authors and grantees alike for the sake of the marketplace. Consider, for example, the suggested hierarchy of five criteria to be used to determine the date of execution of a grant that was proposed by Mr. Perlstein, Mr. Gable and Mr. Freundlich (including the suggestion that the date of publication may be used as a proxy) and the year of creation solution proposed by Mr. del Casino. While these may be useful ideas, they beg some important questions: Does the Copyright Office have the authority to promulgate these kinds of solutions under its rulemaking authority? And if it does, are such regulations within the scope of the regulatory action that was proposed in the current rulemaking?

Starting with the latter point, the current rulemaking sought comment on a proposal to make limited procedural revisions to existing Copyright Office regulations. These revisions would make clear that as long as the notice of termination identified the date of execution of the grant as a date on or after January 1, 1978, the Office would not refuse to record it for lack of timeliness. In explaining the reasons for the proposed regulatory amendment, the notice observed, consistent with many comments submitted in response to the March 2010 notice of inquiry, that "there are legitimate grounds to assert that, in the case of a grant signed (or, in the case of an oral license, agreed to) before January 1, 1978 regarding rights in a work not created until January 1, 1978 or later, such a grant cannot be 'executed' until the work exists." 75 FR 72772, (November 26, 2010). Therefore, "[a] person serving and submitting a notice of termination based on the rationale described above would be justified in including in the notice, as the date of execution of the grant, the date that the work was created." *Id.* This is the rationale the Copyright Office later found to be persuasive and documented in its December Analysis.

The Copyright Office notes that some of the alternative solutions proposed in some of the comments submitted by representatives of authors appear to go beyond the scope of the limited procedural rule governing recordation practice that was proposed in this rulemaking proceeding. Moreover, none

of the commenters who urged caution in response to the Office's proposal have had an opportunity to respond to the new proposals made in those comments. The Office concludes that to adopt a rule that goes beyond that which was proposed in the notice of proposed rulemaking would be beyond the scope of the current rulemaking and would require notice and opportunity for further comment by all interested parties. The Office does not wish to postpone the issuance of a final regulation in the current rulemaking, but is considering publishing a new notice of inquiry that will address the additional proposals.

The Office also has questions regarding the scope of its regulatory authority to publish new proposals, practical solutions or alternatives to documenting the date of execution of the grant, even in instances when said date is elusive by reasonable standards and where many stakeholders would welcome guidance. As a general matter, the Copyright Office is authorized to issue regulations based upon existing law and the statutory grant of authority to establish regulations for the administration of the statutory functions and duties made the responsibility of the Office, such as the administration of a recordation program. See 17 U.S.C. 702. Moreover, the existing regulations, as well as the final regulation adopted today, follow Copyright Office practice with respect to the content of notices of termination. Since the Office first issued regulations governing notices of termination in 1977, the regulations have provided that a notice of termination must recite the relevant date used to calculate the period during which termination may be effected. See Final Regulation, Termination of Transfers and Licenses Covering Extended Renewal Term, 42 FR 45916, 45917 (September 13, 1977) (imposing requirement, for notices of termination under section 304(c), that notices recite the date copyright was secured because "the period during which termination may be effected is measured from the date copyright was originally secured"). When the Office first proposed regulations governing notices of termination under section 203, it proposed that such notices include "identification of the date of execution of the grant being terminated" for the same reason. Notice of Proposed Rulemaking, Notice of Termination, 67 FR 77951, 77953 (December 20, 2002). No one submitted comments in opposition to the proposed regulation, and the requirement was subsequently adopted in interim and final regulations.

See Interim Rule, Notice of Termination, 67 FR 78176 (December 23, 2002) and Final Regulation, Notice of Termination, 68 FR 16958 (April 8, 2003). This history notwithstanding, the Copyright Office does recognize that terminations effected under section 203 are only now ripe, meaning that they are possible for the first time as of January 1, 2013. This is not to say notices could not be filed sooner. Indeed, for grants entered into thirty-five years ago, during 1978, they could first be filed as of 2003, as early as 10 years prior to the earliest possible effective date. But we do allow for the fact that stakeholders are now focused on the issue to an increasing degree, as the actual effective dates for section 203 begin to loom.

The Copyright Office also wishes to underscore that the existing regulations, and the regulation adopted today, do not provide that a notice of termination should identify the date of creation of the work. Rather, the regulation requires identification of the date of execution of the grant because for purposes of section 203, the date of execution is central to establishing the 5-year window, 35–40 years later, during which termination is permissible and may be effected. But, as noted above and in the Office's more extensive *Analysis of Gap Grants Under the Termination Provisions of Title 17*, the purpose of the regulation being adopted today is to permit recordation of a notice of termination of a Gap Grant when the terminating party recites, as the date of execution of the grant, the date the work was created. The notice of termination need not expressly recite that the work was created on a particular date (although it may do so). However, for purposes of establishing timeliness, it seems prudent, if not essential, that the notice recite a date of execution of the grant. This said, and as stated above, the Office is not unwilling to consider the issue more fully in a separate proceeding, which could address questions including whether current regulatory authority would allow the Office to publish practical solutions or alternatives to documenting the date of execution, for the sake of providing guidance to authors and grantees alike and for the sake of establishing clarity in the marketplace.

The Office also believes the existing regulations on notices of termination offer some relief to terminating parties when they cannot precisely identify the date the work was created. Section 201.10 has, since it was first adopted in 1977, included a "harmless error" provision. That provision currently provides that "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 \* \* \* 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." 37 CFR 201.10(e)(2). Thus, since 1977 harmless errors in identifying "the date copyright was originally secured i[n] each work to which the notice of termination applies," the requirement set forth in paragraph (b)(1)(iii), have not affected the validity of the notice. More pertinently, harmless errors in reciting the date of execution, the requirement set forth in paragraph (b)(2)(iii) of section 201.10, also have not affected the validity of a notice of termination under section 203 since regulations governing section 203 notices of termination were first adopted. This provision should provide relief for terminating parties who provide a date of execution which, although it is as accurate as the terminating party is able to ascertain, turns out not to be the actual date of execution of the grant (*i.e.*, in the case of a Gap Grant, the actual date the work was created), so long as the date is provided in good faith and without any intention to deceive, mislead or conceal relevant information.

Of course, if the wrong date is recited in the notice and a court subsequently determines that the actual date of execution was at a time that places the effective date of termination or the date of service of the notice of termination outside of the statutory windows, the harmless error doctrine will be of no assistance. But that would not be the result of the misstatement in the notice of termination of the date of execution; rather, it would be because upon a review of all the relevant facts, a court concludes that the actual date of execution was too early or too late to provide a basis for the service of the notice of termination.

With respect to the specific regulatory text proposed in the notice of proposed rulemaking, the RIAA's comment has persuaded the Copyright Office that treating the identification of the date of execution as a matter of "timeliness" is the wrong approach because it conflates two different topics: (1) Whether a notice of termination was served and/or submitted for recordation on time, and (2) whether the grant that is the subject of the notice of termination was made at a time that qualifies it for termination under section 203. The analysis of the first topic assumes that the grant is terminable under section 203; it simply examines whether the notice was served and recorded in the permissible time frame. In contrast, the analysis of the second topic addresses the very

eligibility of the grant for termination under section 203.

Moreover, as originally drafted, the proposed amendments to § 201.10(f)(4) related only to section 203 notices of termination, even though § 201.10(f)(4) in fact covers both section 203 and section 304 notices of termination. In particular, the following passage ignored the fact that paragraph 4 is supposed to cover both types of termination:

Conditions under which a notice of termination will be considered untimely include: The date of execution stated therein does not fall on or after January 1, 1978, as required by section 203(a) of title 17, United States Code; the effective date of termination does not fall within the five-year period described in section 203(a)(3) of title 17, United States Code.

The Office has therefore concluded that the language relating to identification of the date of execution of the grant should not be included in § 201.10(f)(4), but should be moved to a separate paragraph (f)(5) addressing only the issue of date of execution. The other proposed revisions to § 201.10(f)(4), describing situations in which a notice of termination will be considered untimely, should remain but should be amplified by a reference to section 304(c)(3) (which, like section 203(a)(3), requires that the effective date of termination fall within a prescribed time frame) following the language that currently addresses situations in which the effective date of termination does not fall within the five-year period specified by section 203(a)(3). As a result, the second sentence of § 201.10(f)(4) shall read as follows: "Conditions under which a notice of termination will be considered untimely include: The effective date of termination does not fall within the five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code; or the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination." As noted in the notice of proposed rulemaking, the circumstances identified in this paragraph (b)(4) are not intended to be an exhaustive list of procedural failures that may result in failure to record notices of termination.

For the sake of clarity, the new paragraph addressing identification of the date of execution shall also specifically address the issue of Gap Grants:

(5) In any case where an author agreed, prior to January 1, 1978, to make a grant of a transfer or license of rights in a work that was not created until on or after January 1,

1978, a notice of termination of a grant under section 203 of title 17 may be recorded if it recites, as the date of execution, the date on which the work was created.

The sole remaining issue is whether, as SIIA suggested, additional language is necessary to clarify that this regulation is not a "merits-based determination that could be incorrectly used by authors as authority for the applicability of section 203 of Title 17." As stated in the notice of proposed rulemaking, the Office's recordation of notices of termination of Gap Grants is without prejudice to how a court might ultimately rule on whether any particular document qualifies as a notice of termination within the scope of section 203, consistent with longstanding practices for all notices of termination recorded by the Office. By permitting recordation of such a notice of termination, the Office permits the terminating party to move forward based upon a reasonable interpretation of the statute. Refusing to permit recordation of a notice of termination of a Gap Grant would put the Office in the position of imposing an unjustified impediment to the ability of an author or an author's heirs to assert what may well be a viable right to terminate a grant. If there is any dispute over the validity of such a notice of termination (or of notices of termination of Gap Grants in general), that dispute should be settled in the courts (or in Congress, if Congress accepts the Office's suggestion to enact legislation that will clarify the status of Gap Grants).

The amendment proposed in the notice of proposed rulemaking included, in § 201.10(f)(4), the already-existing language that "Whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction." However, that language would no longer apply to recordation of Gap Grants now that the language relating to Gap Grants is being expanded and moved to a separate paragraph. In considering the issue further, the Office concludes that the proposed language is no longer necessary in § 201.10(f)(4) because the existing regulatory text in § 201.10(f)(5) (which will be renumbered as § 201.10(f)(6) following the insertion of the new paragraph (f)(5)) makes it clear that recordation of a notice of termination does not mean that the notice meets the requirements of the law:

"A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect. However, the fact that the Office has recorded the notice

does not mean that it is otherwise sufficient under the law. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met."

However, we have modified that paragraph to include a reference to "a court of competent jurisdiction," as this phrase appears in the existing language in paragraph (f)(4) and was included in the notice of proposed rulemaking.

#### List of Subjects in 37 CFR Part 201

Copyright, General provisions.

#### Final Regulation

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR, as follows:

#### PART 201—GENERAL PROVISIONS

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

**Authority:** 17 U.S.C. 702; section 201.10 also issued under 17 U.S.C. 203 and 304.

■ 2. Section 201.10 is amended as follows:

- a. By revising paragraph (f)(4);
- b. By redesignating paragraphs (f)(5) and (f)(6) as paragraphs (f)(6) and (f)(7);
- c. By adding a new paragraph (f)(5);
- d. In redesignated paragraph (f)(6), by removing "met." and adding in its place "met, including before a court of competent jurisdiction."

#### § 201.10 Notices of termination of transfers and licenses.

\* \* \* \* \*

(f) \* \* \*

(4) Notwithstanding anything to the contrary in this section, the Copyright Office reserves the right to refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice of termination is untimely. Conditions under which a notice of termination will be considered untimely include: the effective date of termination does not fall within the five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code; or the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination. If a notice of termination is untimely or if a document is submitted for recordation as a notice of termination on or after the effective date of termination, the Office will offer to record the document as a "document pertaining to copyright" pursuant to § 201.4(c)(3), but the Office will not index the document as a notice of termination.

(5) In any case where an author agreed, prior to January 1, 1978, to a grant of a transfer or license of rights in a work that was not created until on or after January 1, 1978, a notice of termination of a grant under section 203 of title 17 may be recorded if it recites, as the date of execution, the date on which the work was created.

\* \* \* \* \*

Dated: May 27, 2011.

**Maria A. Pallante,**  
Acting Register of Copyrights.

Approved by  
**James H. Billington,**  
The Librarian of Congress.

[FR Doc. 2011-13845 Filed 6-3-11; 8:45 am]

BILLING CODE 1410-30-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2011-0379; FRL-9314-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the Inspection and Maintenance (I/M) Program—Quality Assurance Protocol for the Safety Inspection Program in Non-I/M Counties

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP). The revision consists of a change by the Commonwealth of Pennsylvania to the quality assurance program for its motor vehicle inspection and maintenance program (I/M program). Specifically, the Commonwealth is amending a provision of its prior SIP-approved I/M program to change the duration of the timing of quality assurance audits performed by the Pennsylvania Department of Transportation (PENNDOT) as part of their program oversight. The amendment allows for these audits to be conducted within five days of vehicle inspection, instead of the two-day window allowed under the prior approved SIP. This SIP revision affects forty-two counties in Pennsylvania where visual emissions equipment inspections are performed as part of the Commonwealth's annual vehicle safety inspection program (*i.e.*, non-I/M counties). It does not affect the twenty-five counties where separate enhanced I/M emissions inspections are

performed in addition to the annual safety inspection program (*i.e.*, I/M counties). This SIP revision applies to PENNDOT staff overseeing stations that conduct safety inspections in non-I/M program counties. It does not impact motorists subject to the program or stations that perform emissions inspections. EPA is approving this amendment to Pennsylvania's approved I/M SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on August 5, 2011 without further notice, unless EPA receives adverse written comment by July 6, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0379 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*  
[fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2011-0379, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2011-0379. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814-2176, or by e-mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

### I. Background

On May 22, 2009, the Commonwealth of Pennsylvania submitted a formal revision to its SIP. That SIP revision, which is the subject of this action, consists of an amendment to the enhanced motor vehicle emission inspection program SIP submitted by Pennsylvania on December 1, 2003 and approved as part of the Commonwealth's SIP on October 6, 2005 (70 FR 58313). This SIP revision amends Pennsylvania's quality assurance program, which applies to PENNDOT staff that oversee the anti-tampering visual inspection performed as part of the annual safety inspection program in the forty-two Pennsylvania