

offenses. The Commission recently voted to promulgate a proposed rule for public comment that would remove the different ratings for crack and powder cocaine crimes. The proposed rule also makes minor revisions to the breakdown of drug weights in the interest of greater clarity and consistency.

#### Executive Order 12866

The U.S. Parole Commission has determined that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866.

#### Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require a Federalism Assessment.

#### Regulatory Flexibility Act

The proposed rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

#### Unfunded Mandates Reform Act of 1995

The rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

#### Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(c), now codified at 5 U.S.C. 804(3)(c). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

#### The Proposed Rule

Accordingly, the U.S. Parole Commission is proposing the following amendment to 28 CFR part 2.

#### PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Amend § 2.20, in the U.S. Parole Commission Offense Behavior Severity Index, Chapter Nine—Offenses Involving Illicit Drugs, by revising the entry entitled “921 *Distribution or Possession With Intent To Distribute*” in Subchapter C—Cocaine Offenses to read as follows:

#### § 2.20 Paroling policy guidelines: Statement of general policy.

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U.S. Parole Commission Offense Behavior Severity Index

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Chapter Nine—Offenses Involving Illicit Drugs

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#### Subchapter C—Cocaine Offenses

921 *Distribution or Possession With Intent To Distribute*

(a) If extremely large scale (*e.g.*, involving 15 kilograms or more cocaine powder of 100% purity, or equivalent amount; or 15 kilograms of a substance containing a detectable amount of cocaine base), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (*e.g.*, involving at least 5 kilograms but less than 15 kilograms cocaine powder of 100% purity, or equivalent amount; or at least 5 kilograms but less than 15 kilograms of a substance containing a detectable amount of cocaine base), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role\*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (*e.g.*, involving at least 1 kilogram but less than 5 kilograms cocaine powder of 100% purity, or equivalent amount; or at least 1 kilogram but less than 5 kilograms of a substance containing a detectable amount of cocaine base), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role,

grade conduct under (d) as Category Five;

(f) If medium scale (*e.g.*, involving at least 100 grams but less than 1 kilogram cocaine powder of 100% purity, or equivalent amount; or at least 100 grams but less than 1 kilogram of a substance containing a detectable amount of cocaine base), grade as Category Five;

(g) If small scale (*e.g.*, involving at least 5 grams but less than 100 grams cocaine powder of 100% purity, or equivalent amount; or at least 5 grams but less than 100 grams of a substance containing a detectable amount of cocaine base), grade as Category Four;

(h) If very small scale (*e.g.*, involving at least 1 gram but less than 5 grams cocaine powder of 100% purity, or equivalent amount; or at least 1 gram but less than 5 grams of a substance containing a detectable amount of cocaine base), grade as Category Three;

(i) If extremely small scale (*e.g.*, involving less than 1 gram cocaine powder of 100% purity, or equivalent amount; or less than 1 gram of a substance containing a detectable amount of cocaine base), grade as Category Two.

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Dated: September 17, 2010.

**Isaac Fulwood,**

*Chairman, U.S. Parole Commission.*

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**BILLING CODE 4410-31-P**

#### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2009-4]

#### Minimum Balance Requirement and Automatic Replenishment Option for Deposit Account Holders

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office is proposing to amend its regulations to set the minimum level of activity required to hold a deposit account at 12 transactions per year; require deposit account holders to maintain a minimum balance in that account; mandate the closure of a deposit account the second time it is overdrawn; and offer deposit account holders the option of automatic replenishment of their account via their bank account or credit card.

**DATES:** Written comments must be received in the Office of the General

Counsel of the Copyright Office no later than November 22, 2010.

**ADDRESSES:** If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room LM-401, James Madison Building, 101 Independence Ave., SE., Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, SE., Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM-403, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Tanya Sandros, Deputy General Counsel or, Chris Weston, Attorney Advisor. Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

#### **SUPPLEMENTARY INFORMATION:**

##### **Deposit Account Background**

The Copyright Office maintains a system of deposit accounts for those who frequently use its services. An individual or entity may establish a deposit account, make advance deposits into that account, and charge copyright fees against the balance instead of sending separate payments with applications and other requests for services. This process has proven to be more efficient and less expensive for both the Office and the applicant than sending separate payments to the Copyright Office for each application for registration or for other services.

##### **Prior Notice of Proposed Rulemaking**

On July 14, 2009, the Copyright Office published a notice in the **Federal Register**, 74 FR 33930, seeking public comment on a proposed amendment to its copyright registration regulations (37

CFR 201 and 202). The amendment would have required that applications for copyright registration paid for by deposit account debits be submitted using the electronic Copyright Office (eCO) registration system (eService). The July 2009 Notice of Proposed Rulemaking also sought comment on whether registration applicants continue to find deposit accounts to be a valuable service.

The goal of the July 2009 Notice of Proposed Rulemaking (and the goal of the present Notice) was to solve the problem of paper registration applications being suspended for lack of deposit account funds. As the Notice explained, when the deposit account being used for payment has insufficient funds to process a paper application, the Copyright Office suspends processing of the application to notify the account holder that replenishment of the account is needed, and places the pending application and associated deposit copies in temporary storage. The suspended applications, which may number 3,000 or more at any one time, must be reviewed regularly by Office staff to locate those that are newly funded and reprocess them. Thus, insufficient deposit account funding effectively doubles—at a minimum—the time Office staff must spend processing an application, time that would otherwise be more profitably spent on processing properly filed claims in a more timely manner.

On average, three to four percent of paper applications for registration are suspended each year due to lack of sufficient deposit account funds. In fiscal 2007, between 16,000 and 22,000 applications were put on hold for insufficient deposit account funds, and the amount appears to have remained consistent throughout 2008 and 2009. The Office has expended substantial resources managing these suspended applications and deposits. While the Office assesses service charges for deposit account overdrafts (\$165) and dishonored deposit account replenishment checks (\$85), *see* 37 CFR 201.3(d), these penalties do not recover all costs or solve the fundamental problems associated with the additional handling and the delay in processing.

In July 2009, the Copyright Office proposed that the problem of insufficient deposit account funds for paper applications should be solved by requiring all deposit account holders to file their applications via eService, the Office's electronic registration system. An application for registration made via eService cannot be completed until the method of payment is verified by, for example, ensuring that sufficient funds

are present in the deposit account and payment has been made. This method is much more efficient than filing paper applications, which must go through a number of processing steps before the validity of the proffered method of payment can be ascertained. The proposal also noted that electronic registration benefits applicants in that it offers a lower fee than paper registrations (\$35 instead of \$65) and helps to establish an earlier effective date of registration.

##### **Comments Received in Response to Proposal for Mandatory Electronic Registration for Deposit Account Holders**

Even though approximately 3,000 entities currently use deposit accounts, the July 2009 Notice of Proposed Rulemaking garnered only six public comments. Of these, the American Society of Media Photographers, Inc. (ASMP), the Historical Publications Section of the North Carolina Department of Cultural Resources (NCDRC), and Perseus Book Group supported the proposed eService application requirement. The Motion Picture Association of America (MPAA), the National Intellectual Property Researchers Association (NIPRA), and Government Liaison Services, Inc. (GLS) opposed the proposal. Four of the commenters also discussed the continued value of deposit accounts. The MPAA, NCDRC, and Perseus vigorously maintained that deposit accounts still offer significant benefits. ASMP, on the other hand, offered conditional support for their elimination.

For those commenters who voiced approval of the mandatory electronic registration proposal—praising the current functionality of eService, NCDRC comment at 2, and stating that the requirement "would substantially improve the speed, efficiency and economy of processing applications," ASMP comment at 1-2—the benefits of electronic registration will of course remain available.

The MPAA comments, however, challenged the initial proposed rule as premature and suggested an alternative whereby each deposit account holder would be charged an up-front \$100 fee that would be held as a kind of security deposit. MPAA comment at 2. According to the MPAA proposal, if an applicant has insufficient funds in its deposit account to pay for a paper application, the Copyright Office should close the deposit account and use the security deposit to pay for returning the application to the applicant. The MPAA argued that rights-holders should not be

denied the option of continuing to use paper applications because of the actions of “irresponsible” deposit account holders. See MPAA comment at 4.

MPAA also expressed its skepticism of eService’s reliability. “eService is relatively new and there continues to be some ‘bugs’ in the system,” it stated. Specifically, “MPAA member companies have experienced difficulties in allowing multiple users to access the system at the same time, and there is a need for the new system to have a meaningful review capability, which would include true search functionality.” MPAA comment at 3. MPAA’s comment dates from August 2009, and since then the Office has significantly improved eService’s capabilities.

Two other commenters also took issue with the Copyright Office’s claims for eService efficiency. NIPRA and GLS challenged the Copyright Office’s estimation of how long eService registration applications take to be processed, arguing that since the advent of electronic registration, processing time has actually increased to two years. NIPRA comment at 2; GLS comment at 2. In fact the processing time increase—which is real—represents for the most part the increased time needed to process paper applications, which now have to be transcribed into the Office’s digital system. eService applications with sufficient funds are not subject to this additional step, and thus generally enjoy quicker processing. Currently, 90% of eService registration applications are processed in slightly more than five months (meaning many are completed much sooner), compared to 25 months for paper applications.

NIPRA and GLS further charged that “given the Copyright Office requirement for deposits consisting of the ‘best edition’ of works, the physical limitations of the electronic system will render compliance with the requirement impossible for works such as voluminous texts, motion pictures and many software filings.” NIPRA comment at 2. This concern is misplaced. Electronic registration does not require the submission of an electronic deposit. Applicants have an option of either uploading the deposit as an electronic file or sending the deposit to the Office using the packing slip provided during the electronic registration process. 37 CFR 202.3(b)(2)(ii)(A)–(B). Whether a deposit copy is sent electronically or physically depends upon its native format and the Library’s needs. Most works subject to the best edition requirement must be submitted in hard copy form, since in most cases the

Library’s best edition requirements specify a physical format. See 37 CFR 202.20(b)(1). This requirement does not preclude the use of eService to file an application or to pay the application fee. It is only when a work is published “solely in an electronic format” (e.g., not in a physically tangible format) that “submission of the digital file[s] in exact first-publication form and content” is required. 37 CFR 202.20(b)(2)(iii)(B).

NIPRA and GLS also questioned the security of electronic deposit copies. NIPRA comment at 2; GLS comment at 1–2. The Copyright Office is unaware that the uploading of files to the Copyright Office via eService presents any security concerns. Of course, the security and integrity of all eService transactions are of paramount importance to the Copyright Office, and it has implemented robust security measures, which continue to be improved. However, the prior eService amendment only concerned the registration application, not the deposit copies which, in the majority of cases may continue to be sent separately in physical, tangible formats.

The Copyright Office carefully considered each of the comments discussed above and it has been persuaded that mandatory electronic application was not the most appropriate solution to its problems of underfunded paper applications. While the Office still feels strongly that electronic registration is vastly more efficient than paper registration, and redounds to the benefit of applicants as much as to the benefit of the Office, it has concluded that mandatory electronic registration was an over-general solution to the specific problems described. Its current proposal of a minimum deposit account balance requirement and optional automatic replenishment discussed herein is a more targeted response to the problems facing the Office.

#### **Comments Received in Response to Question Regarding the Continued Availability of Deposit Accounts**

In its July 15th, 2009, notice, the Copyright Office also sought public comment on whether it should cease offering deposit accounts altogether. It noted that, in an era when paper applications and payment via check were the norm, a separate, simplified deposit account system presented attractive efficiencies to frequent applicants and to the Office. It also pointed out that in an era of electronic registration and payment via corporate or other credit cards, the administrative costs of maintaining a separate deposit account system are no longer clearly

offset by its advantages; hence, the reason for the Office’s inquiry concerning abolition of the deposit account system.

While one commenter stated that there was “no apparent need” for the Copyright Office to continue offering deposit accounts, ASMP comment at 2, three other commenters argued that the elimination of deposit accounts would certainly be harmful. Perseus stated that deposit accounts are a “valuable and relevant service” that make it easier to track its copyright budget. Perseus comment at 1. NCDCCR, referencing its particular administrative issues as a state agency, said that deposit accounts offer significant efficiencies over individual payments. NCDCCR comment at 2. Finally, MPAA argued that corporate credit cards are not an effective alternative because they require spending controls that, if improperly monitored, could result in registration applications being delayed for insufficient funds. MPAA comment at 4.

The Copyright Office acknowledges that deposit accounts are a useful and efficient option for copyright owners who frequently use its services, including, but not limited to registration. Consequently, it will continue to offer deposit accounts for the foreseeable future, but reserves its prerogative to revisit the question of their utility and cost to the Office.

#### **New Proposal**

After considering the comments filed to the initial NPRM, the Copyright Office explored other options for addressing its problems with underfunded deposit accounts and is now proposing a number of administrative requirements to solve the problem. Specifically, the Office is proposing to amend its regulations to (1) Set the minimum level of activity required to hold a deposit account at 12 transactions per year; (2) require deposit account holders to maintain a minimum balance in that account; (3) mandate the closure of a deposit account the second time it is overdrawn; and (4) offer deposit account holders the option of automatic replenishment of their account via their bank account or credit card.

##### *1. Mandatory Minimum Deposit Account Activity and Balance*

The Copyright Office proposes to replace the words “a considerable amount of business” with “12 or more transactions a year” in section 37 CFR 201.6(b) in order to more clearly delineate the intended users of the deposit account program. The program’s

goal is to better serve rights-holders who engage in regular, multiple registrations and other transactions with the Copyright Office every year, and the proposed language reflects this intent with specificity.

The Office also proposes to institute a requirement that every deposit account holder must establish, in consultation with the Copyright Office, a minimum balance for its deposit account. Ideally, this balance will be the lowest amount a deposit account holder can have in his or her account and still be able to pay for their regular number of copyright registration applications. This amount will be set collaboratively so that both the account holder and the office are comfortable that it will be sufficient for the account holder's expected activity.

In the event a deposit account reaches its minimum balance, the Copyright Office will automatically notify the account holder, but take no further action. The minimum balance requirement is intended to act primarily as an indicator to the account holder that the account may need replenishment; going below a minimum balance does not in itself expose the account holder to any adverse consequences.

### 2. Consequences of Overdrawing a Deposit Account

The Copyright Office proposes that upon the second occasion that a deposit account is overdrawn—meaning the second time there is not enough money in an account to pay the fee for a submitted registration—the account will be closed. In practice this rule will only affect deposit account holders who use paper applications, because eService will not allow an application to be submitted without sufficient funds.

However, a deposit account holder whose account is closed because it has been overdrawn twice is not foreclosed from using a deposit account in the future. The deposit account holder may re-open a new account on the condition that it is funded through the automatic replenishment option. This condition is to protect the account holder from the risk of overdrawing again and to protect the Copyright Office from the risk of further suspended applications.

### 3. Voluntary Automatic Replenishment

The Copyright Office proposes to offer a voluntary automatic replenishment program to all deposit account holders. Under this program, the deposit account holder would provide pre-authorization to the Copyright Office to replenish the account from the account holder's credit card or bank account. Replenishment

would take place when the deposit account reaches its minimum balance, at which time the Office will also immediately notify the account holder of the replenishment. The account holder would determine the amount of replenishment above the pre-determined minimum balance at the time the account holder enters the program.

The Office seeks comment from the public on the following proposed regulations for governing deposit accounts maintained by the Copyright Office.

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

Copyright, General provisions.

#### Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR Ch. II as follows:

#### PART 201—GENERAL PROVISIONS

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

**Authority:** 17 U.S.C. 702.

2. Section 201.6(b) is revised to read as follows:

#### § 201.6 Payment and refund of Copyright Office fees.

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(b) *Deposit accounts.* (1) Persons or firms having 12 or more transactions a year with the Copyright Office may prepay copyright expenses by establishing a Deposit Account. The Office and the Deposit Account holder will cooperatively determine an appropriate minimum balance for the Deposit Account, and the Office will automatically notify the Deposit Account holder when the account reaches that balance.

(2) The Copyright Office will close a Deposit Account the second time the Deposit Account holder overdraws his or her account. An account closed for this reason can be re-opened only if the holder elects to fund it through automatic replenishment.

(3) In order to ensure that a Deposit Account's funds are sufficiently maintained, a Deposit Account holder may authorize the Copyright Office to automatically replenish the account from the holder's bank account or credit card. The amount by which a Deposit Account will be replenished will be determined by the deposit account holder. Automatic replenishment will be triggered when the Deposit Account reaches the minimum level of funding established pursuant to section (b)(1), and Deposit Account holders will be

automatically notified of the replenishment.

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Dated: October 1, 2010.

**Tanya Sandros,**

*Deputy General Counsel.*

[FR Doc. 2010-25129 Filed 10-7-10; 8:45 am]

**BILLING CODE 1410-30-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN55

#### Reimbursement Offsets for Medical Care or Services

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations concerning the reimbursement of medical care and services delivered to veterans for nonservice-connected conditions. The proposed rule would apply in situations where third-party payers are required to reimburse VA for costs related to care provided by VA to a veteran covered under the third-party payer's plan. This proposed rule would add a new section barring offsets by third-party payers and establishing a process by which third-party payers would submit a request for a refund on claims for which there is an alleged overpayment.

**DATES:** Comments must be received on or before December 7, 2010.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN55, Reimbursement Offsets for Medical Care or Services." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Anthony Norris, Program Analyst,