Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–153(c) to read as follows:

§ 165.T01–153 Regulated Navigation Area; Long Island Sound Marine Inspection Zone and Captain of the Port Zone

* * * * *

(c) *Effective dates.* This section is effective from December 10, 2001 through March 15, 2003.

* * * * *

3. Revise temporary § 165.T01–154(b) to read as follows:

§ 165.T01–154 Safety and Security Zones; Long Island Sound Inspection Zone and Captain of the Port Zone.

* * * * *

(b) *Effective dates.* This section is effective from November 15, 2002 through March 15, 2003.

* * * * *

Dated: November 7, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–29069 Filed 11–12–02; 4:49 pm]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–2A]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is publishing a final rule amending its regulation governing notices of termination of transfers and licenses covering the extended renewal term. The current regulation is limited to notices of termination made under section 304(c) of the copyright law. The Sonny Bono Copyright Term Extension Act created a separate termination right under section 304(d). The final rule establishes procedures governing notices of termination of the extended renewal term under either section 304(c) or section 304(d).

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor for the General Counsel. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Background

Under the 1909 copyright law, works copyrighted in the United States before January 1, 1978, were subject to a renewal system in which the term of copyright was divided into two consecutive terms. Under the system initially established by the 1909 legislation, the duration of copyright protection was for an original copyright term of 28 years and a renewal term of an additional 28 years. The Copyright Act of 1976, Public Law 94–554, retained the renewal system for works that were copyrighted before 1978, and were still in their first term on January 1, 1978. However, under section 304 of the copyright law, the renewal term was extended to 47 years, creating a total potential duration period of 75 years.

Besides generally extending the renewal term to 47 years, Congress also provided a termination procedure authorizing the termination of transfers or licenses during the extended portion of the renewal term. Established under section 304(c) of the copyright law, this provision created a means for authors and heirs of authors to secure the benefits of the additional 19 years added to the renewal term. In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10.

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act, (''CTEA''), Public Law 105–298, 112 Stat. 2827 (1998). The CTEA amended the copyright law, title 17 of the United States Code, to extend for an additional 20 years the term of copyright protection in the United States. For works for which the duration of protection was determined under section 304 of title 17, the renewal term was extended from 47 years to 67 years. Like the Copyright Act of 1976, CTEA also contained a termination provision covering the newly extended portion (in this case, the last twenty years) of the extended renewal term. Established under section 304(d), this new right of termination was available only if the termination right under section 304(c) had expired by the effective date of CTEA, and if no termination had been previously exercised under section 304(c).

2. Proposed Regulation

On May 3, 2001, the Copyright Office published a proposed regulation modifying the termination regulation to include terminations made under section 304(d), in addition to terminations under section 304(c). 66 FR 22139. This was to be accomplished by making several adjustments to existing Copyright Office regulations.

Most of the changes involved 37 CFR 201.10, which governs notices of termination of transfers and licenses covering the extended renewal term. The proposed regulation added introductory text clarifying that the scope of the regulation covers terminations under either section 304(c) or section 304(d). In provisions where the existing regulation referred to section 304(c), the proposed regulation added an alternative reference to section 304(d).

The Office proposed substantive changes in only two areas. First, subsection (c)(i) of the proposed regulation provided that if the termination is made under section 304(d), the notice will provide a statement to that effect. Most of the notices of termination made under 304(d) which have been received in this Office already contained such a statement. No corresponding requirement was imposed in notices of termination issued under section 304(c) because such a requirement would have upset established legal practices in issuing notices under that section.

The second substantive change in the proposed regulation created new subsection (c)(vi), requiring that notices under section 304(d) contain a statement that termination of rights for the extended renewal term had not been previously exercised. This is a statutory requirement imposed in subsection 304(d), and including the requirement as part of the notice made it less likely that second notices of terminations would be filed.

The proposal further included a provision modifying 37 CFR 201.4(a)(v), regarding recordation of transfers and certain other documents, to include a reference to section 304(d).

3. Comments and Modifications

The Copyright Office received one comment on the proposed modification of the regulations. Professor Tyler Ochoa of Whitter Law School suggested two modifications in the content of the termination notice to make it consistent with the statute. First, he noted that since terminations cannot be made for works made for hire, notices of termination for both section 304(c) and (d) should affirmatively state that the work is not a work made for hire. Second, he pointed out that in order to be eligible to terminate under section 304(d), the termination right under section 304(c) must have expired by the effective date of the Sonny Bono Copyright Term Extension Act. Since CTEA took effect on October 27, 1998, Professor Ochoa calculated that termination under section 304(d) would only be available for works first published between January 1, 1923, and October 27, 1939. Accordingly, he asserted that notices of termination under section 304(d) should affirmatively assert that the work was originally published between these dates.

The Copyright Office has considered Professor Ochoa's comments carefully. The requirement in section 304(d) that the termination right under section 304(c) must have expired at the time CTEA took effect was not a provision reflected in the proposed regulation. We agree in principle with Professor Ochoa's comments on this point. However, we disagree with some of the details of his analysis. First, he states that the relevant dates are January 1, 1923, and October 27, 1939. In fact, although Professor Ochoa is correct in calculating that January 1, 1923, (the copyright date of the earliest works the terms of which were extended by CTEA) is the first of the two relevant dates, he appears to be a day late in his calculation of the second date. The better reading of section 304(d) is that copyright must have been secured no later than October 26, 1939. That is the last date on which copyright could have been secured for any work for which the section 304(c) termination right had already expired by October 27, 1998, the effective date of CTEA.

We calculate this date by noting that termination of a transfer or license under section 304(c) may be effected during a period of five years commencing ''fifty-six years from the date copyright was originally secured,'' 17 U.S.C. 304(c)(3), meaning that termination may be effected up to 61 years (56 + 5) after copyright was secured. However, in order to effect a termination, an author or an author's successor must serve a notice of termination ''not less than two years before'' the effective date, *i.e.*, up to 59 years (61 − 2) after copyright was secured. 17 U.S.C. 304(c)(4)(a). Therefore, the termination right will have ''expired,'' see 17 U.S.C. 304(d), 59 years after copyright was secured. See S. Rep. No. 104–315, at 22 (1996) (purpose of section 304(d) was to ''provide a revived power of termination for individual authors whose right to terminate prior transfers and licenses of copyright under section 304(c) has expired, provided the author has not previously exercised that right''). On the effective date of CTEA, October 27, 1998, an author of a work for which copyright had first been secured on October 27, 1939, could still have served an effective notice of termination under section 304(c). Therefore, there would have been no need to give that author the additional right to serve a notice of termination under section 304(d). But an author of a work for which copyright had first been secured on October 26, 1939, could not have served an effective notice of termination on October 27, 1998, because the 59-year deadline for serving a notice of termination would have expired at the end of the previous day, *i.e.*, on October 26, 1998. Hence, works for which copyright was secured between January 1, 1923, and October 26, 1939, (and for which the section 304(c) termination right was not exercised) are eligible for the section 304(d) termination right.

Second, Professor Ochoa states that the requirement is that the work was first published between the relevant dates in 1923 and 1939. In fact the requirement is somewhat broader: copyright must have been secured on or between those dates. See 17 U.S.C. 304(d)(2). Although publication with notice was the most common means of securing copyright under the Copyright Act of 1909, copyright could also be secured for certain unpublished works by registering those works with the Copyright Office. See section 11 of the 1909 Act, 17 U.S.C. 12 (repealed effective Jan. 1, 1978).

Although we agree in principle with Professor Ochoa's observation, we note that the regulation already requires that the notice of termination designate the date on which copyright was originally secured. To add to this requirement an additional statement that the copyright was secured between January 1, 1923, and October 26, 1939, would be redundant. Nevertheless, it would be useful for parties involved in a termination under section 304(d) to be aware of this requirement. For this reason, we are adding the following sentence to the introductory paragraph of § 201.10: ''a termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939.''

With regard to the proposal to add a statement in the notice of termination that the work was not a work made for hire, the Copyright Office has decided not to adopt this suggestion. The regulation on notice of termination has never required that a notice of termination recite all of the statutory requirements underlying termination. The current regulation has been in effect since 1977, and no practitioner has reported a problem because the notice does not affirmatively state that the work being terminated is not a work made for hire. For this reason, the Copyright Office has decided not to disrupt settled practice in this area.

In reviewing generally the proposed regulation, the Copyright Office has also decided to adopt a number of technical corrections. In the proposed regulation, a new subsection (b)(vi) required that notices under section 304(d) contain a statement ''that termination of rights for the extended renewal term has not been previously exercised.'' This provision was intended to apply to the 19-year extended renewal term under section 304(c), rather than the 20-year extended renewal term under section 304(d). In order to clarify this matter, the language has been revised to read: ''If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised.''

In order to give authors and practitioners sufficient time to learn of these new requirements, the effective date of these amendments to the regulation is January 1, 2003. Notices of termination served on or after January 1, 2003, must comply with the amended regulation. Of course, authors and their representatives who serve notices of termination prior to that date are encouraged, although not required, to include the information that will be required in the amended regulation.

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below:

PART 201—GENERAL PROVISIONS

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

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

§ 201.4 [Amended]

2. In § 201.4(a)(1)(v), add ''and (d)'' after ''304(c).''

§ 201.10 [Amended]

3. Section 201.10 is amended as follows:

a. by adding introductory text before paragraph (a);

b. by redesignating paragraphs (b)(1)(i) through (v) as (b)(1)(ii) through (v) and (vii), respectively;

c. by adding new paragraphs (b)(1)(i) and (vi);

d. by removing ''paragraph (v)'' in newly redesignated paragraph (b)(1)(vii) and adding ''paragraph (vii)'' in its place; and

e. by revising paragraphs (c)(2), (d)(2), (d)(4) and (e).

The revisions and additions to § 201.10 read as follows:

§ 201.10 Notices of terminations of transfers and licenses covering extended renewal term.

This section covers notices of termination of transfers and licenses covering the extended renewal term under sections 304(c) and 304(d) of title 17, of the United States Code. A termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939.''

* * * * *

(b) * * *

(1) * * *

(i) If the termination is made under section 304(d), a statement to that effect;

* * * * *

(vi) If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised; and

* * * * *

(c) * * *

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

* * * * *

(d) * * *

(2) The service provision of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

* * * * *

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of either section 304(c) or section 304(d) of title

17, U.S.C., whichever applies, shall not render the notice invalid.

(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) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) 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.

* * * * *

Dated: October 28, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–28920 Filed 11–14–02; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for checking postage meters out of service and for handling faulty meters. The need to ensure the security of Postal Service revenues mandates these changes. The changes will clarify the responsibilities of the meter provider and improve the secure handling of faulty postage meters.

DATES: The rule is effective November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, Manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: The United States Postal Service is seeking to improve the secure handling of faulty postage meters by the approved postage meter providers and to enhance the accuracy of determinations by the postage meter providers of the proper amounts of postage to be refunded from faulty postage meters. We are amending the regulations for checking postage meters out of service and for handling faulty meters to address these concerns and to align the regulations with changes to the *Domestic Mail Manual* (DMM) regarding postage meters published in the **Federal Register** on November 8, 2001 (Vol. 66, No. 217, pages 56432–56447). We have deleted references to mechanical meters from the amended section since all mechanical postage meters have been decertified since 1999 and should no longer be in service. In this final rule, the Postal Service clarifies the definition of ''faulty'' as it applies to postage meters. In the proposed rule, the manufacturer sent all faulty meters to a special, secure facility for examination to determine the additional processing required to withdraw each meter. In this final rule, the initial examination of a faulty meter occurs in the field where the manufacturer or the manufacturer's agent determines whether the faulty meter can be withdrawn in accordance with procedures for a nonfaulty meter, or needs to be handled at the special, secure facility. We are also revising the regulation to allow 7 business days to prepare and file the report on faulty meters when the meter registers cannot be read, a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, and there is no evidence of tampering. We will amend the remaining sections of CFR part 501 in the near future so that they reflect the changes in the postage meter population and changes in the DMM.

The proposed rule was published in the **Federal Register** on May 2, 2002 (Vol. 67, No. 85, pages 22025–22027), with a request for submission of comments by June 3, 2002. We received three submissions from postage meter manufacturers in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule.

Discussion of Comments

1. The three commenters requested clarification of the term ''faulty.''

The Postal Service clarified the definition of ''faulty'' as it applies to postage meters. Faulty meters include those that are inoperable, those that are misregistering or the registers are unreadable, those that inaccurately reflect their current status, those that show any evidence of tampering or abuse, and those for which there is information or other indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed. The proposed rule is revised in response to these comments.

2. One commenter assumed that the requirement for manufacturers to ''(e)nsure that faulty meters are not presented to the licensing Post Office for checkout or withdrawal'' meant that nonfaulty meters could be presented to the licensing Post Office.

This assumption is incorrect. The meter licensee returns all meters to the manufacturer or the manufacturer's agent for withdrawal, as directed in DMM 57, section P030.3.13, Returning a Postage Evidencing System or PSD. The manufacturer or its agent checks nonfaulty meters out of service under § 510.23(g) and either has an approved process for withdrawal, or ensures that the meter is examined by a Postal Service employee. Faulty meters are returned to the manufacturer and handled by the manufacturer in accordance with the procedures in § 501.23(h). To clarify the withdrawal process, we deleted the paragraph referenced in this comment from the proposed rule.

3. Two commenters noted the difficulty of complying with the requirements for obtaining the licensee's signature to complete PS Form 3601–C, Postage Meter Activity Report, for faulty meters.

The Postal Service understands that as of the effective date of this rule, PS Form 3601–C does not include a specific place for the licensee's signature confirming that the information on the form is correct, as required by the proposed regulation. However, until the form is revised and widely distributed, and the inventory of old versions of the form is depleted, the manufacturer's representative should ensure that the licensee (or the licensee's approved representative) signs the form and prints his or her name clearly under items C3 and C5. The Postal Service suggests that when the licensee is unavailable, the licensee's representative or agent who is responsible for releasing the meter to the manufacturer and signing the manufacturer's paperwork should also be responsible to review and sign the Postal Service form. There is no change to the proposed rule as a result of this comment.

4. Some commenters requested more information on the reporting requirements for faulty meters. Commenters also requested additional time to submit the reports.

Postage Technology Management will notify manufacturers when there are any changes from current reporting requirements for faulty meters. The Postal Service has reviewed the request