The current regulation requires both first and second requests for reconsideration to be mailed to the Copyright Office. 37 CFR 202.5(d). Prior to the amendment made here, both first and second requests for reconsideration would be considered untimely if they were received by the Copyright Office more than three months after the date of the preceding refusal to register. See 37 CFR 202.5(b)(3), (c)(3). This regulation permits the Register of Copyrights to suspend or waive, in whole or in part, the time requirements for submitting a request for reconsideration, though only upon a showing of good cause. 37 CFR 202.5(e).

The Office recognizes that applicants requesting reconsideration of a refusal to register a copyright claim may benefit from a rule that requires an appeal to be postmarked within the prescribed time period, rather than a deadline based upon when the appeal is received by the Office. In particular, the Office understands that it can be difficult to predict how long it will take for a reconsideration request to actually be received by the Office, particularly given security screening related delays. Accordingly, the Office has decided to adopt a “mailbox” or “postal” rule for requests for reconsideration delivered by the United States Postal Service or dispatched by a commercial carrier, courier, or messenger, which will offer applicants greater certainty while continuing to ensure that appeals are considered in a timely fashion. This rule will apply to any appeals that are postmarked or dispatched after the rule’s effective date; for appeals postmarked or dispatched prior to that date, the previous regulation will apply.

The Copyright Office is publishing this amendment as a final rule without first publishing a notice of proposed rulemaking, as it constitutes a change to a “rule[ ] of agency . . . procedure, or practice.” 5 U.S.C. 553(b)(A). The rule does not “alter the rights or interests of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.” JEM Broad. Co. v. F.C.C., 22 F.3d 320, 326 (D.C. Cir. 1994). Other provisions that relate to submissions of reconsideration requests remain unaffected.

List of Subjects in 37 CFR Part 202

Copyright, Legal process.

Final Regulations

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

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

2. Amend § 202.5 as follows:

a. In paragraph (b)(3), remove the phrase “received by the Copyright Office” and add in its place the phrase “postmarked or dispatched by a commercial carrier, courier, or messenger”.

b. In paragraph (c)(3), remove the phrase “received by the Copyright Office” and add in its place the phrase “postmarked or dispatched by a commercial carrier, courier, or messenger”.

Dated: September 2, 2016.

Maria A. Pallante,
Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

David S. Mao,
Acting Librarian of Congress.

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