

Registration, recordation and related services		Fees (\$)
* * * * *		
(16) Recordation of a document, including a notice of intention to enforce		
Single title		105
Additional titles (per group of 1 to 10 titles)		35
Additional titles provided in an electronic title list		
1 to 50 additional titles		60
51 to 500 additional titles		225
501 to 1,000 additional titles		390
1,001 to 10,000 additional titles		555
10,001 or more additional titles		5,550
Correction of online Public Catalog data due to erroneous electronic title submission (per title)		7
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\* \* \* \* \*

Dated: October 24, 2017.

**Karyn Temple Claggett,**

*Acting Register of Copyrights and Director  
of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

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**BILLING CODE 1410-30-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. 2017-8]

#### Secure Tests

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The U.S. Copyright Office is issuing an update to its interim rule, issued June 12, 2017, governing registration of secure tests. Based on the initial comments received on that interim rule, the Office has determined that there is an immediate need to establish a new group registration option for secure test questions and answers and other related materials (referred to as “test items”) that are stored in an electronic database, test bank, or other medium of expression. This interim rule incorporates most of the same procedures that the Office adopted in its recent interim rule on secure tests and adds additional procedures for group registration. To seek a group registration, applicants will be required to submit an online application, upload a redacted copy of the individual test items to the electronic registration system, and complete and submit a brief

questionnaire. If, based on the answers to the questionnaire, the test items appear to be eligible for the group registration option, the Office will contact the applicant and schedule an appointment to deliver these materials to the Office in person. On the appointed date, the applicant must bring a copy of the application and a complete unredacted copy of the actual test items. In addition, the applicant must bring a redacted copy of the test items, and a signed declaration confirming that this copy is identical to the redacted copy that was uploaded to the electronic registration system. The Office will examine each test item to determine if it contains sufficient copyrightable authorship. If the Office registers the claim, the registration will cover each test item as a separate work of authorship, and the registration will be effective as of the date the Office initially received the application, filing fee, and the redacted copy of the test items in proper form through the electronic registration system. To be clear, the previous interim rule otherwise remains in effect, and applicants may continue to use that rule to register individual secure tests. The Office welcomes public comment on both this interim rule and the June 12, 2017 interim rule.

**DATES:** Effective November 13, 2017. Comments on this interim rule and the interim rule published on June 12, 2017 (82 FR 26850), must be made in writing and must be received by the U.S. Copyright Office no later than December 11, 2017.

**ADDRESSES:** For reasons of government efficiency, the U.S. Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are on the U.S. Copyright

Office Web site at <http://copyright.gov/rulemaking/securetests/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office for special instructions using the contact information below.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Sarang Vijay Damle, General Counsel and Associate Register of Copyrights; Erik Bertin, Deputy Director of Registration Policy and Practice; or Abioye Ella Mosheim, Attorney-Advisor, by telephone at 202-707-8040 or by email at [rkas@loc.gov](mailto:rkas@loc.gov), [sdam@loc.gov](mailto:sdam@loc.gov), [ebertin@loc.gov](mailto:ebertin@loc.gov), and [abmo@loc.gov](mailto:abmo@loc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. General Provisions Regarding Copyright Registration

Under the Copyright Act of 1976, the U.S. Copyright Office (the “Copyright Office” or “Office”) is responsible for registering copyright claims. See 17 U.S.C. 408. In doing so, the Office has a statutory obligation to confirm that the legal and formal requirements for registration have been met, such as confirming fixation and examining the work for copyrightable authorship. See 17 U.S.C. 410(a) (obligating the Register of Copyrights (the “Register”) “after examination” to “determine[] that . . . the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met”).

The Office has the further obligation to obtain a registration deposit that is sufficient to verify the scope of the claim, and to provide an adequate archival record of what was examined and registered. *Id.* 408(b) (generally requiring a “complete” copy of works deposited for registration); *id.* 705(a) (requiring the Register to “ensure that

records of deposits . . . are maintained”); *id.* 705(b) (requiring the Register to make “the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office . . . open to public inspection”). In the case of unpublished works, the Office is statutorily required to keep the deposit for the full term of copyright protection. 17 U.S.C. 704(d).

#### B. Secure Test Registration Procedures

In 1978, as part of the regulations implementing the 1976 Copyright Act, the Office issued a regulation that established a special procedure to exempt “secure tests” from some of the otherwise applicable rules for registration, deposit, and examination. The Office explained that this procedure was specifically designed for tests “used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and professional certification” and that it was intended to protect the confidential nature of these works. *See* 42 FR 59302, 59304 & n.1 (Nov. 16, 1977) (noting correspondence from the Educational Testing Service, American College Testing Program, The College Entrance Examination Board, The American Council on Education, the Law School Admission Council, the National Board of Medical Examiners, the Federation of State Medical Boards, and the National Conference of Bar Examiners, among others). In establishing this special procedure, the Office adopted a definition of “secure tests” that it believed would best identify the kinds of tests that raised special confidentiality concerns.<sup>1</sup>

Furthermore, the Office observed that “although secure tests should be deposited in the Copyright Office for examination incident to registration under section 408, their retention by the Office and availability for public inspection could severely prejudice the future utility, quality, and integrity of the materials.” *Id.* Accordingly, the Office adopted a regulation providing that “[i]n the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination.” 37 CFR 202.20(c)(2)(vi)

(1978). At the same time, the Office recognized the need to retain some evidence of the work that had been examined and registered. Accordingly, the regulation required that “sufficient portions, description[s], or the like [be] retained so as to constitute a sufficient archival record of the deposit.” *Id.* In promulgating this regulation, the Office also offered that “[a]s a matter of practice, special arrangements can be made for the examination of such materials under strict conditions of security and in the presence of a representative of a copyright owner.” 42 FR at 59304.

Initially, this procedure was used to register secure tests administered with physical booklets, as that was the type of “work” the Office had in mind when the regulation was adopted. Beginning in the 1990’s, the Office expanded its procedures—without altering the underlying regulation—to permit secure registration of tests administered in a machine-readable format and secure tests administered with physical booklets containing questions taken from an automated database. This procedure mirrored the procedure described above, with the exception of the deposit requirement. Specifically, applicants could bring an unredacted copy of the entire test to the in-person appointment, or alternatively, they could bring 50 unredacted pages from the test or the database of test questions. With respect to the redacted copy of the test, applicants could use the same procedure used to examine physical test booklets, or alternatively, they could submit 50 redacted pages from the test or the underlying database of test questions. Still later, the Office modified this procedure—again without revisiting the regulation—stating that applicants could submit the title page of the test, a redacted copy of the last page of the test, and 50 pages from the test or database of test questions (either in redacted or unredacted form). While the Office described these procedures in a circular (*Copyright Registration of Secure Tests (Circular 64)*), they were never incorporated into the Office’s regulations and were never the subject of a formal rulemaking.

While these post-1978 changes to the secure test procedure were an attempt to be responsive to developments in the marketplace—as the testing industry moved from using static test booklets to randomized or adaptive tests delivered by a computer—they did not ensure, among other things, an adequate deposit that could serve as a long-term record of what material was examined and registered. As a result, over time the Office’s special procedures for

registration of secure tests came into increasing tension with the general rules governing copyright registration.

As a result, on June 12, 2017, the Office issued an interim rule that memorialized certain aspects of its secure test procedure, and adopted new procedures to increase the efficiency of its examination of secure tests. *See* 82 FR 26850 (June 12, 2017). In addition, the interim rule brought secure test registration procedures back into alignment with the underlying statutory and regulatory framework for copyright registration. In particular, the Office made clear that only those works that satisfy the regulatory definition of a “secure test” would be eligible for the secure test procedure. *Id.* at 26851. In addition, the Office noted that, under its longstanding regulation, the redacted copy must contain a sufficient archival record of what was submitted for registration, and that its prior practices allowing for the registration of test item banks were in considerable tension with that requirement. *Id.* at 26851. The Office therefore declined to permit registration of test item banks under those prior practices.

The Office issued the June 12, 2017 rule on an interim basis and before receiving public comments, in part, because it memorialized most of the Office’s longstanding procedures for examining secure tests, and because the improvements in that process were expected to provide immediate benefits for test publishers. *See* 82 FR 26853. The Office invited comment on the interim rule and provided a generous amount of time for public input before issuing a final rule to give applicants and the Office an opportunity to evaluate the new procedures based on actual experience.

## II. Group Registration of Secure Test Items

Although the deadline for submitting comments does not expire until December 11, 2017, many commenters have expressed significant concerns about the June 12, 2017 interim rule, contending that it restricts their ability to register, in a secure manner, test items (*i.e.*, sets of questions and answers) stored in or pulled from electronic databases and test banks.<sup>2</sup>

<sup>2</sup> *See e.g.*, PSI Comments at 7–8; Am. Board of Fam. Med., Inc., Comments at 2; NBCRNA Comments at 2. In addition, many comments called for updates to the longstanding regulatory definition of “secure test,” which is defined as “a nonmarketed test administered under supervision at specified centers on scheduled dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration.” 37 CFR 202.13(b)(1). Although the

<sup>1</sup> The regulation defined a “secure test” as “a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.” 37 CFR 202.20(b)(4) (1978).

The Office appreciates the commenters bringing these issues to our attention.

The Office recognizes that secure tests serve an important societal function, and that providing a secure method for registering copyright claims in those tests furthers the public good. Although the June 12, 2017 interim rule was aimed to better align secure test registration procedures with the Office's statutory obligations and general good practices for copyright registration, the Office also recognizes that the interim rule did not provide secure test publishers with a means for registering individual test items that are stored in a database or test bank without disclosing the content of these works. To address these legitimate concerns, the Office has decided to issue another interim rule as part of this rulemaking, and to make that rule effective immediately.

#### A. Group Registration Generally

This interim rule establishes a new group registration option for test items prepared for use in a secure test.

When Congress enacted the Copyright Act, it authorized the Register to specify by regulation the administrative classes of works for the purpose of seeking a registration and the nature of the deposit for each such class. Congress also gave the Register the discretion to allow groups of related works to be registered with one application and one filing fee. See 17 U.S.C. 408(c)(1). This procedure is known as group registration. Pursuant to this authority, the Office issued regulations creating group registrations for certain limited categories of works, provided that certain conditions have been met. See *generally* 37 CFR 202.3(b)(1)–(10), 202.4.

As the legislative history explains, allowing “a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law.” H.R. Rep. No. 94–1476, at 154 (1976), *reprinted in* 1976 U.S.C.A.N.N. 5659, 5770; S. Rep. No. 94–473, at 136 (1975). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. *Id.* If copyright owners do

not submit their works for registration under this permissive system, the public record will not contain any information concerning those works. This creates a void in the record that diminishes the value of the Office's database.

Allowing a number of related works to be submitted on one application, however, is not without its issues. When large numbers of works are grouped together in one application, information about the individual works may not be adequately captured. Group registration options, therefore, require careful balancing of the need for an accurate public record and the need for an efficient method of facilitating the examination of those works.

The new procedure will be known as the “group registration option for secure test items” or “GRSTQ”. The rule will allow a group of test items that are derived from a test bank or database to be registered using the same basic procedure for registering an individual secure test.<sup>3</sup> The test items must be prepared for use in a “secure test,” as defined in § 202.13(b)(1) of the earlier interim rule. And if certain requirements have been met, the test items may be registered by submitting a redacted copy of the works and presenting an unredacted copy of these materials to the Office for an in-person examination.

Under this interim rule, each individual test item may constitute one work if the item is determined to be copyrightable in itself. While there is no limit to the number of test items that may be included in each submission, each work must share certain traits. Specifically, the test items contained in a single group must all be either published or unpublished. They must all be created by the same author or co-authors, and the copyright claimant(s) must be the same for each item. Because an overwhelming majority of secure tests are works made for hire, the Office is considering whether to limit these registrations to works made for hire, although it did not include this restriction in this interim rule. The Office welcomes public comments on whether this requirement should be included in the final rule.

A group registration for secure test items will cover each work in the group, *i.e.*, each test item will be deemed to be registered as a separate work. Claims in the selection, coordination, or arrangement of the group as a whole

will not be permitted.<sup>4</sup> Each of these requirements is discussed below.

#### A. Eligibility Requirements

##### 1. Test Items That May Be Included in the Group

To qualify for the GRSTQ option, all the test items in the group must be prepared for use in a secure test, as defined in § 202.13(b)(1) of the earlier interim rule. A database or test bank does not qualify as a “secure test” in and of itself. But the Office recognizes that when test items are selected from a test bank and assembled together to form an actual secure test, they share the same security concerns that prompted the Office to create the special accommodation for individual secure tests. For this reason, test items that are prepared for use in a secure test will be eligible for the GRSTQ option.

For the purposes of registration, a “test item” is a question (or “stem”), the correct answer to that question, any incorrect answer choices (or “distractors”), and any associated material, such as a narrative passage or diagram. A single narrative or diagram followed by multiple related questions and correct and incorrect answers will together be considered a single test item. Under this interim rule, each test item will be considered one work. Thus, if an applicant submits one textual passage followed by a question and four answers related to that passage, this would be considered one work for purposes of registration. A single narrative or diagram followed by multiple sets of related questions and answers will also be considered one work. The Office believes this definition will be broad enough to encompass many different kinds of test items. It nonetheless welcomes public comments on whether that definition could be clarified or otherwise improved.

##### 2. The Number of Test Items That May Be Included in the Group

Under this interim rule, the Office will allow an unlimited amount of works to be included with each group registration, and will examine each individual test item for copyrightable authorship. Applicants should note, however, that an extremely large number of test items may take a

Office is not in a position to amend that regulatory definition at this time, it acknowledges that the administration of secure tests has changed in many ways since this definition was first promulgated in 1978, and it is continuing to consider those comments that have asked the Office to update this definition to account for these changes.

<sup>3</sup> To be clear, the interim rule issued on June 12, 2017 otherwise remains in effect, and may continue to be used to register individual secure tests. 37 CFR 202.13(b)(1).

<sup>4</sup> Because of the confusion surrounding the treatment of test items stored in databases under the June 12, 2017 interim rule, the Office intends to apply this interim rule to pending registration applications, but where applicable, the Office will request a revised application and deposit materials. If these requirements are met, the Office will assign an effective date of registration based on the date that the initial application and deposit were received.

significant amount of time—in some cases, several days—to examine. Moreover, applicants will be required to pay an hourly fee for the time spent examining these test items during the in-person appointment.

Over time, allowing an unlimited number of works to be registered with one application may reduce the quality of the registration record, or it may impose an unreasonable administrative burden on the Office. Therefore, the Office will monitor this process for several months following the issuance of this interim rule, and will evaluate what effect, if any, allowing an unlimited amount of tests items per registration may have on the Office's business processes to determine whether the number should be limited under the final rule.

When completing the electronic application, the applicant must reasonably identify the total number of test items that are included in the application. The applicant should provide this information on the questionnaire and by numbering each test item that appears in the deposit. The Office will use this information to plan for the in-person examination. Numbering the test items will also help the Office identify and examine the relevant works in the deposit.

### 3. Publication

Under this interim rule, an applicant will be allowed to register a group of unpublished test items, or a group of test items that are published within a three-calendar-month period. Applicants will not be allowed to combine published and unpublished test items in the same claim.

If an applicant submits a group of published test items, and if the items were published on the same date, the applicant should provide that date in the application. If the test items were published on different dates, the applicant must identify the first date that the items were published. Claims with a range of publication dates outside of a three-calendar-month period will be refused.

### 4. Title of the Group

To register a group of test items prepared for use in a secure test, the applicant must provide a title for the group as a whole. In addition, the applicant must append the term "GRSTQ" at the beginning of the title of the group, so that the Office can more easily assign the claim to an appropriate member of the Registration Program. Upon request, the examiner will remove this term from the title field before the claim is approved.

Applicants must provide additional descriptive information in the title that, at a minimum, identifies the name of the secure test that the items are intended for. The title may also include any relevant dates. For example, applicants can identify the specific test where the test items will be used (e.g. "GRSTQ: Test items for February 2017 LSAT"), the test bank or database from which the test items were derived (e.g. "GRSTQ: Test items added to the FINRA Series 7 Exam item bank in the 3rd quarter of 2017"), or the subject matter of the test items (e.g. "GRSTQ: SAT reading comprehension test items").

### 5. Author and Claimant

Under this interim rule, all the test items in the group must be authored by the same person or organization. Likewise, the copyright claimant(s) for each work must be the same person or organization. If the author(s) and claimant(s) are different, the application must contain an appropriate transfer statement explaining how the claimant obtained all of the exclusive rights in the works.

### B. The Application Process

The application process described in this interim rule is essentially identical to the process described in the interim rule announced on June 12, 2017. *See* 82 FR 26852–53. To register a group of test items, applicants must complete and submit an application through the electronic registration system using the Standard Application, and they must pay the \$55 filing fee. Prior to scheduling an examination appointment, applicants must complete and upload a brief questionnaire about the test items, which may be obtained from the Office's Web site at <https://www.copyright.gov/forms/securetest-questionnaire.pdf>, and they must upload a redacted copy of all the test items being registered. The Office will use this information to determine if the works are eligible for the GRSTQ option.

The copy uploaded to the electronic registration system should contain a redacted copy of each test item, and, as mentioned above, each test item should be numbered. Most of the content that appears on each page may be blocked out, provided that the redacted copy contains a sufficient amount of visible content that may be used to identify each item. For instance, the applicant may leave a narrow vertical or diagonal strip of visible content across each page. Alternatively, the applicant may redact the content of each test item, except for a small number of identifiable words. The Office has provided representative

examples of acceptable redaction methods in the most recent version of *Circular 64* (posted on the Office's Web site on November 13, 2017).

The questionnaire and the redacted copy containing all of the test items must be contained in separate electronic files, and they must be uploaded to the electronic registration system in Portable Document Format (PDF). The file name for the questionnaire should include the word "Questionnaire" and the case number assigned to the claim. (This eleven-digit number is automatically generated by the electronic registration system, and it appears near the top of each screen of the online application.) The file name for the redacted copy should match the title provided on the questionnaire.

Once the application, filing fee, questionnaire and the redacted copy have been received, the Office will assign the claim to a Literary Division examiner who will examine the claim in the date order of the Literary Division's pending overall workload. The examiner will review these items to determine if the works appear to be eligible for the GRSTQ option. If so, the examiner will contact the applicant and schedule an in-person appointment to examine the works under secure conditions. The fact that the examiner schedules an appointment, however, does not necessarily mean that the test items are eligible for the GRSTQ option or that they will be registered. As discussed below, the in-person examination may reveal that individual test items or the group as a whole is ineligible for registration under these procedures or in general.<sup>5</sup>

### C. The In-Person Examination

On the day of the in-person examination appointment, the applicant must bring the following materials to the Office:

(i) A copy of the completed application.

(ii) The nonrefundable examination fee.<sup>6</sup> This fee will be based on the amount of time that it takes to examine each item during the in-person appointment; it is in addition to the filing fee mentioned above. Both the

<sup>5</sup> If the examiner determines that the test items are not eligible for registration under secure test procedures, but are eligible under normal (i.e., non-secure test) examination procedures, the examiner will ask the applicant to upload a complete unredacted copy of the items, and he or she will change the effective date of registration to match the date that the unredacted copy is received.

<sup>6</sup> The Office will charge the same hourly examination rate regardless of whether an applicant is seeking to register a secure test or a group of test items prepared for use in a secure test. *See* 37 CFR 201.3(d)(5).

filing fee and the examination fee are nonrefundable, regardless of whether the Office issues a certificate of registration for the test items.

(iii) A copy of the redacted test items that were uploaded to the electronic registration system.

(iv) A signed declaration confirming that this redacted copy is identical to the redacted copy that was uploaded to the electronic registration system. Applicants may obtain a copy of this declaration from the Office's Web site at <https://www.copyright.gov/forms/securetest-declaration.pdf>.

(v) An unredacted copy of the test items submitted for registration.

Applicants must bring a copy of the unredacted test items, with the entire content completely visible so that they may be examined. The test items in the unredacted copy should be numbered, should appear in the same order as the redacted copy, and should precisely match the test items as they appear in the redacted copy.

The examiner will review the redacted and unredacted copies in a secure location in the presence of the applicant or the applicant's representative. Because the Office will examine each test item for copyrightable authorship, and because the Office is not currently placing a limit on the number of items, the examination may require more time and may result in a higher total examination fee than an examination involving an individual secure test. If the examiner determines that one or more of the test items are not copyrightable, he or she will require the applicant to exclude that material from the claim in order to continue the examination, or will refuse the claim altogether. Face-to-face disputes with the examiner about the sufficient creativity of an item will not be allowed and will result in refusal of the claim. If an applicant does not agree that an individual test item should be excluded, the applicant may seek to register that test item or test items alone and appeal the subsequent refusal.

When the examination is complete, the examiner(s) will stamp the date of the appointment on the redacted and unredacted copies and will return them to the applicant. The signed declaration and the redacted copy that was uploaded to the electronic system will be retained by the Office; this redacted copy will constitute the deposit.

If the examiner determines that the legal and formal requirements have been met, he or she will register the claim(s) and will add an annotation to the certificate indicating that the test items were registered under this interim rule in accordance with the eligibility

requirements for this group registration option. The registration will be effective as of the date that the Office originally received the application, filing fee, and the redacted copy that was uploaded to the electronic registration system.

#### *D. The Scope of Registration*

Under this interim rule, a group registration will cover each test item in the group, and each test item will be registered as a separate work. *See* 37 CFR 202.4(m). The group is merely an administrative classification created solely for the purpose of registering multiple works with one application and one filing fee. *See* 17 U.S.C. 408(c)(1) ("Th[e] administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title."). Therefore, the Office will not consider the group as a whole to be a compilation or a collective work under sections 101, 103(b), or 504(c)(1) of the Copyright Act. By contrast, when an applicant registers a secure test under the June 12, 2017 interim rule, the applicant must assert a claim in the test as a whole, or in the individual test items and the selection, coordination, and/or arrangement of those items. *See* 86 FR at 26852.

#### **IV. Request for Comments**

This interim rule will go into effect immediately upon the publication of this document in the **Federal Register**. As was the case with the June 12, 2017 interim rule, this is a non-substantive rule that is not subject to the restriction in 5 U.S.C. 553(d). *See* 82 FR 26853. In addition, there is "good cause" for this rule to go into immediate effect because it restores to secure test publishers a method of registering test items that existed prior to the issuance of the June 12, 2017 interim rule but was not provided under that rule. *See* 5 U.S.C. 553(d)(3). And, finally, the Copyright Office prepared this interim rule based upon its experience in administering other group registrations, and its review of comments received in response to the June 12, 2017 interim rule.

Comments will be due on December 11, 2017 (the same deadline for submitting comments on the June 12, 2017 interim rule). The Office decided to issue this rule without publishing an initial notice of proposed rulemaking for several reasons:

First, the interim rule addresses concerns expressed by interested parties in comments filed in response to the earlier interim rule on secure tests. Second, the procedures for scheduling an in-person appointment, submitting an unredacted copy of the works, and

providing a redacted copy for the Office's records are consistent with the Office's longstanding practices for examining secure tests.

Finally, issuing the rule on an interim basis affords both the Office and interested parties an opportunity to evaluate how these procedures work in conjunction with the procedures announced in the June 12, 2017 interim rule, to determine whether these procedures should be modified in any respect, and whether the number of test items that may be included in each claim should be adjusted before the Office issues a final rule. *See* 5 U.S.C. 553(b)(3)(B).

#### **List of Subjects in 37 CFR Part 202**

Copyright, Preregistration and registration of claims to copyright.

#### **Interim Regulation**

In consideration of the foregoing, the U.S. 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 § 202.4 as follows:

■ a. Revise paragraph (b).

■ b. Redesignate paragraphs (k) through (m) as paragraphs (l) through (n), respectively.

■ c. Add new paragraph (k).

■ d. In newly redesignated paragraph (n), remove "paragraph (g)" and add in its place "paragraph (g) or (k)".

The revision and addition read as follows:

#### **§ 202.4 Group registration.**

\* \* \* \* \*

(b) *Definitions.* For purposes of this section, unless otherwise specified, the terms used have the meanings set forth in §§ 202.3, 202.13, and 202.20.

\* \* \* \* \*

(k) *Secure test items.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of test items may be registered in Class TX with one application, one filing fee, and identifying material, if the conditions set forth in § 202.13(c) and (d) have been met.

\* \* \* \* \*

■ 3. Amend § 202.13 as follows:

■ a. Revise paragraph (a).

■ b. Add paragraph (b)(5).

■ c. Revise paragraphs (c) introductory text and (c)(2).

- d. Remove paragraph (c)(3).
- e. Redesignate paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4), respectively.
- f. Revise newly redesignated paragraphs (c)(3)(iii), (iv), and (v) and the first sentence in newly redesignated paragraph (c)(4).
- g. Add paragraph (d).

The additions and revisions read as follows:

#### § 202.13 Secure tests.

(a) *General.* This section prescribes rules pertaining to the registration of secure tests or a group of test items prepared for use in a secure test.

(b) \* \* \*

(5) A *test item* is comprised of a question (or “stem”), the correct answer to that question, any incorrect answer choices (or “distractors”), and any associated material, such as a narrative passage or diagram, and each item shall be considered one work. A single narrative, diagram, or other prefatory material, followed by multiple sets of related questions and correct or incorrect answers shall together be considered one item.

(c) *Deposit requirements.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a secure test or a group of test items prepared for use in a secure test may be registered with identifying material, and the filing and examination fees required by § 201.3(c) and (d), if the following conditions are met:

\* \* \* \* \*

(2) In the case of a secure test, the applicant must submit a redacted copy of the entire test. In the case of a group of test items prepared for use in a secure test, the applicant must submit a redacted copy of each test item. In all cases the redacted copy must contain a sufficient amount of visible content to reasonably identify the work(s). In addition, the applicant must complete and submit the secure test questionnaire that is posted on the Copyright Office’s Web site. The questionnaire and the redacted copy must be contained in separate electronic files, and each file must be uploaded to the electronic registration system in Portable Document Format (PDF). The Copyright Office will review these materials to determine if the work(s) qualify for an in-person examination. If they appear to be eligible, the Copyright Office will contact the applicant to schedule an appointment to examine an unredacted copy of the work(s) under secure conditions.

(3) \* \* \*

(iii) A copy of the redacted version of the work(s) that was uploaded to the electronic registration system.

(iv) A signed declaration confirming that the redacted copy specified in paragraph (c)(3)(iii) of this section is identical to the redacted copy that was uploaded to the electronic registration system.

(v) In the case of a secure test, the applicant must bring an unredacted copy of the entire test. In the case of a group of test items prepared for use in a secure test, the applicant must bring an unredacted copy of all the test items.

(4) The Copyright Office will examine the copies specified in paragraphs (c)(3)(iii) and (v) of this section in the applicant’s presence. \* \* \*

(d) *Group registration requirements.* The Copyright Office may register a group of test items if the following conditions have been met:

(1) All the test items must be prepared for use in a secure test, and the name of the secure test must be identified in the title of the group.

(2) The group may contain an unlimited amount of works, but the applicant must identify the individual works included within the group by numbering each test item in the deposit.

(3) The applicant must provide a title for the group as a whole, and must append the term “GRSTQ” to the beginning of the title.

(4) The group must contain only unpublished works, or works published within the same three-calendar-month period and the application must identify the earliest date that the works were published.

(5) All the works in the group must have the same author or authors, and the copyright claimant for each work must be the same. Claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application. Each item in the group must be separately copyrightable or must be excluded from the group.

Dated: November 6, 2017.

**Karyn Temple Claggett,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket DOT–OST–2016–0189]

RIN 2105–AE58

### Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation’s Drug-Testing Panel and Certain Minor Amendments

**AGENCY:** Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is amending its drug-testing program regulation to add hydrocodone, hydromorphone, oxycodone, and oxycodone to its drug-testing panel; add methylenedioxymphetamine as an initial test analyte; and remove methylenedioxyethylamphetamine as a confirmatory test analyte. The revision of the drug-testing panel harmonizes DOT regulations with the revised HHS Mandatory Guidelines established by the U.S. Department of Health and Human Services for Federal drug-testing programs for urine testing. This final rule clarifies certain existing drug-testing program provisions and definitions, makes technical amendments, and removes the requirement for employers and Consortium/Third Party Administrators to submit blind specimens.

**DATES:** This rule is effective on January 1, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Patrice M. Kelly, Acting Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone number 202–366–3784; [ODAPCWebMail@dot.gov](mailto:ODAPCWebMail@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose

The Department of Transportation (DOT or the Department) issued a notice of proposed rulemaking (NPRM) on January 23, 2017. 82 FR 7771 (Jan. 23, 2017). The NPRM proposed to revise Part 40 of Title 49 of the Code of Federal Regulations (CFR) to harmonize with certain parts of the revised the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (HHS Mandatory Guidelines), which was published on