The Copyright Office is amending § 202.20(c)(1)(iv) of its regulations to permit the deposit, in the case of registration for works first published outside the United States, of either one complete copy or phonorecord of the best edition. No change was necessary in § 202.19 of the regulations governing mandatory deposit under section 407 of the Act for the Library of Congress. Of course, deposits made under amended § 202.20(c)(1)(iv) for registration will continue to meet the deposit requirements of section 407 for the Library. Deposit for the Library, where the foreign work is published in the United States and no registration has been made, will continue to require the deposit of the best edition.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act. ¹

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202
Copyright registration.

Final Regulation
In consideration of the foregoing, part 202 of title 37 of the Code of Federal Regulations is amended in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

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


2. In § 202.20, paragraph (c)(1)(iv) is revised to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *
(c) * * *
(1) * * *
(iv) In the case of works first published outside of the United States, one complete copy or phonorecord of the work either as first published or of the best edition. For purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States. * * * * *

¹ Error; line should read: "ACTION: Final rule."
The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposit") (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Ralph Oman.
Register of Copyrights.
Approved by:
James H. Billington.
The Librarian of Congress.

[FR Doc. 91-28423 Filed 11-25-91; 8:45 am]
BILLING CODE 1410-07-M

ML-437
November 1991-500