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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is announcing that collection of information included in its Prohibited Transaction Exemption 97-41 has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). This notice announces the OMB approval number and expiration date.

**FOR FURTHER INFORMATION CONTACT:** Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N-5647, Washington, DC 20210. Telephone: (202) 219-4782. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of March 23, 2000 (65 FR 15653), the Agency announced its intent to request renewal of its current OMB approval for the information collection provisions of Prohibited Transaction Class Exemption 97-41 (Collective Investment Fund Conversion Transactions). In accordance with PRA 95, OMB has renewed its approval for the ICR under OMB control number 1210-0104. The approval expires 08/31/2003.

Under 5 CFR 1320.5 (b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Dated: September 7, 2000.

**Gerald B. Lindrew,**  
Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

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## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2000-3 CARP DTRA2]

#### Digital Performance Right in Sound Recordings and Ephemeral Recordings

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

**ACTION:** Notice with a request for comments.

**SUMMARY:** The Copyright Office is announcing receipt of a petition to convene a Copyright Arbitration Royalty Panel ("CARP") to set rates and terms for the period beginning January 1, 2001, for two statutory licenses which, in one case, allows certain eligible nonsubscription services to perform sound recordings publicly by means of digital audio transmissions and, in the second case, allows a transmitting organization to make an ephemeral recording of a sound recording for the purpose of making a permitted public performance. The Office is also announcing the date by which a party who wishes to participate in the rate adjustment proceeding must file its Notice of Intention to Participate.

**DATES:** Comments and Notices of Intention to Participate are due no later than October 13, 2000.

**ADDRESSES:** An original and five copies of a Notice of Intention to Participate and an original and five copies of any comment shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20559-6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

#### SUPPLEMENTARY INFORMATION:

##### Background

Since 1995 copyright owners of sound recordings have enjoyed an exclusive right to perform publicly their copyrighted work by means of a digital audio transmission, subject to certain limitations. 17 U.S.C. 106(6). Among the initial limitations placed on the performance of the sound recording was the creation of a statutory license to

cover performances made by nonexempt, noninteractive, digital subscription services. 17 U.S.C. 114 (1995).

However, it soon became apparent that with the increased use of digital communications networks, like the Internet, further legislation was needed to clarify how the law applied to nonsubscription digital audio services. Congress responded by passing the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105-304, which amended section 114 to expand the scope of the statutory license to include a public performance of a sound recording by means of "an eligible nonsubscription transmission"<sup>1</sup> and a transmission by "a preexisting satellite digital audio radio service" which performs a sound recording by means of a digital audio transmission.<sup>2</sup>

The DMCA also created a second statutory license to cover the making of an "ephemeral recording" of a sound recording—a necessary adjunct to the making of a digital transmission. 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord specified in section 112(a). 17 U.S.C. 112(e).

##### Determination of Reasonable Terms and Rates

The procedure set forth in the statute for establishing reasonable terms and rates is the same for both licenses. See 17 U.S.C. 112(e), 114(f), 801(b)(1) and 803(a). The terms and rates for the two new statutory licenses may be determined through a voluntary

<sup>1</sup> An "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. 17 U.S.C. 114(j)(6)(1998).

<sup>2</sup> A "preexisting satellite digital audio radio service" is a subscription digital audio radio service that received a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. 17 U.S.C. 114(j)(10)(1998). Only two entities, CD Radio and XM Satellite Radio (formerly known as American Mobile Radio Corporation), are known to qualify under the statutory definition as preexisting satellite digital audio radio services.