The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Kemmerer, WY. Newly developed Area Navigation (RNAV) approaches at the Kemmerer Municipal Airport has made this proposal necessary. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNSAV (GPS) RWY 16 and RNAV (GPS) RWY 34, at Kemmerer Municipal Airport, has made this proposal necessary. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Kemmerer Municipal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM WY Kemmerer, WY [Revised]

Kemmerer Municipal Airport, WY
(lat. 41°49′30″N., long. 110°33′32PrimeW.)
That airspace extending upward from 700-feet above the surface within the 8-mile radius of the Kemmerer Municipal Airport, and within 4 miles each side of the 174° bearing from the Kemmerer Airport extending from the airport 11 miles south of the airport, and within 3.6 miles each side of the 354° bearing from the Kemmerer Airport extending from the airport to 16.1 miles northwest of the airport; and that airspace extending upward from 1,200-feet above the surface bounded by a line beginning at lat. 41°30′00″N., long. 111°00′00″W; to lat. 42°10′00″N., long. 111°00′00″W.; to lat. 42°10′00″N., long 110°00′00″W.; to lat. 41°30′00″N., long. 110°00′00″W.; to lat. 41°15′00″N., long 110°23′00″W.; to lat. 47°53′30″N., long. 104°29′40″W.; to lat. 48°10′00″N., long. 104°12′00″W.; to point of origin; and excluding that airspace within Federal airways; and the Fort Bridger, WY, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on July 3, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–18237 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR 864

[Docket No. 95P–0315]

Hematology and Pathology Devices; Reclassification of Automated Differential Cell Counters; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of May 9, 2001 (66 FR 23634). The document proposes to reclassify from class III (premarket approval) to class II (special controls) the automated differential cell counter (ADCC). The document published inadvertently with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–11580, appearing in the **Federal Register** of Wednesday, May 9, 2001, the following correction is made: On page 23634, in the second column, ''[Docket No. 95P–0351]'' is corrected to read ''[Docket No. 95P–0315].''

Dated: July 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18343 Filed 7–20–01; 8:45 am]

BILLING CODE 4160–01–S

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTRA]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is requesting comment on proposed regulations that will govern the RIAA collective when it functions as the designated agent receiving royalty payments and statements of accounts

from nonexempt, subscription digital transmission services which make digital transmissions of sound recordings under the provisions of section 114 of the Copyright Act.

DATES: Comments are due no later than August 22, 2001.

ADDRESSES: 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; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

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

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform the copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to transmit sound recordings under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license.

Section 114(f)(1)(A) outlines the procedural steps for setting these rates and terms for subscription transmissions by preexisting subscription services. The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give the interested parties the initial opportunity of establishing the applicable rates and terms. If the parties are unable to reach an agreement, then section 114(f)(1)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel (''CARP'') for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The first proceeding to set rates and terms for the section 114 license for preexisting subscription services began in 1995 and concluded with the issuance of a final rule and order by the Librarian of Congress on May 8, 1998. *See* 63 FR 25394 (May 8, 1998). The parties in this proceeding numbered four: The Recording Industry Association of America (''RIAA''); Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. (''DMX''); and Muzak, L.P. (''Muzak'') (collectively, ''the parties''). In this proceeding, the parties proposed, and the CARP adopted, a term which gave the RIAA the responsibility for collecting and distributing the royalty fees to all copyright owners. *Id.* at 25397. The Librarian adopted this term, then crafted additional regulations that afforded copyright owners a means to verify the accuracy of the royalty payments made by the RIAA collective,[1] established the value of each performance, specified the nature of the costs that RIAA may deduct from the royalty fees prior to distribution, and set forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate set by the Librarian and the additional conditions imposed on the RIAA collective in its capacity as the collection agent for copyright owners. *See, Recording Industry Ass'n* v. *Librarian of Congress,* 176 F.3d 528 (D.C. Cir. 1999). The United States Court of Appeals for the District of Columbia Circuit upheld the rate set by the Librarian and found that the Librarian has the authority to impose terms on copyright owners or their agents. However, it remanded for further consideration certain terms imposed on RIAA under 37 CFR 260.2(d), 260.3(d), 260.6(b), and 260.7, because the CARP had not considered these issues, leaving the record devoid of any evidence upon which to fashion any terms concerning the collection and distribution of the royalty fees. *Id.* at 536.

On February 13, 2001, the Copyright Office issued a scheduling order, directing the parties to this proceeding to file their direct cases with the Office on April 17, 2001. *See,* Order in Docket No. 96–5 CARP DSTRA (February 13, 2001). On that date, RIAA filed a petition to establish terms governing the RIAA collective and to suspend the scheduled proceeding.[2] DMX and Muzak, two of the three other parties to the original proceeding, authorized RIAA to inform the Office that they consent to the proposed terms offered by RIAA in its petition. The third party, Music Choice, had already informed the Office by letter dated February 26, 2001, of its intent not to participate further in this proceeding and that it did not object to the terms proposed by RIAA.

On June 22, 2001, RIAA requested a revision to the terms offered in its petition to remove a reference to the section 112 statutory license for the making of ephemeral copies and to make clear that membership in the collective is open only to those copyright owners whose works are subject to statutory licensing and thus generate the funds to be distributed by the collective. Neither DMX nor Muzak had any objections to the proposed changes. Music Choice, having previously withdrawn from the proceeding, took no position on the proposed changes. There being no objection from any party with a direct interest in this proceeding, the Copyright Office has incorporated the revision into the terms set forth in the petition.

Pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, the Librarian can adopt the parties' proposed terms without convening a CARP, provided that the proposed terms are published in the **Federal Register** and no party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a party with an interest in the proceeding who is prepared to participate in a CARP proceeding, the purpose of which is to adopt terms governing the RIAA collective in its handling of royalty fees collected from the three subscription services, these terms will be adopted. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under [section 114(f)(2) (1995)]. Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates

[1] In November 2000, RIAA formed ''Sound Exchange,'' an unincorporated division of RIAA, to administer statutory licenses, including the section 114 statutory license. *See,* Memorandum in Support of RIAA Petition to Establish Terms Governing the RIAA Collective at 2.

[2] A copy of the RIAA Petition to Establish Terms Governing the RIAA Collective and To Suspend CARP Proceedings, its memorandum in support of its petition, and its letter requesting a revision of the terms proposed in its petition may be found on the Copyright Office website at: *http://www.loc.gov/copyright/carp#114remand.*

embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995)(citations omitted).

The proposed terms shall govern the RIAA collective solely in its capacity as the agent designated to receive royalty payments from the three subscription services that were parties to this proceeding and operate under the section 114 statutory license. These terms have been developed to protect the interest of those copyright owners who are not members of the RIAA collective and who did not participate in this proceeding. Thus, due to the circumstances under which these terms are being promulgated, if they are adopted, they shall have no precedential value in any future CARP. Terms governing the administrative functions of any future collective shall be decided in future rate adjustment proceedings either through negotiations or after a hearing before a CARP based upon a fully developed written record. For this reason, parties must limit their comments to the terms offered in the context of the proceeding to set rates and terms for the three subscription services—Music Choice, DMX, and Muzak—for the period from the effective date of the Digital Performance Act through December 31, 2001.

Accordingly, the Copyright Office is granting RIAA's request to suspend further CARP proceedings and is publishing for public comment RIAA's proposed terms concerning the operations of the collective. Any party who objects to the proposed terms must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. However, it is unclear whether any party who did not participate in the early stages of the rate adjustment proceeding the purpose of which was to set rates and terms applicable to the three subscription services can join the proceedings at this stage. Any proceeding convened to consider these terms would be a continuation of the prior CARP proceeding, Docket No. 96–5 CARP DSTRA, on remand from the United States Court of Appeals for the District of Columbia Circuit. *See,* 17 U.S.C. 802(g). If a party does file an objection to the proposed terms, it must state why it believes the law permits a new party to commence participation at this stage. The content of the written challenge must also describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 260 of 37 CFR as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.2 [Amended]

2. In § 260.2, remove paragraph (d).

3. Section 260.3 is amended as follows:

a. By revising paragraphs (c), (d), and (e); and

b. By adding new paragraph (f).

The revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The collective designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these payments to copyright owners of the exclusive right under 17 U.S.C. 106(6) whose sound recordings were performed by the services making the payments. Such copyright owners shall allocate their receipts according to the provisions set forth at 17 U.S.C. 114(g)(2).

(d) Before making the distributions specified in paragraph (c) of this section, the designated collective may deduct reasonable costs incurred in the administration of the collection and distribution of the royalty payments, so long as the reasonable costs do not exceed the actual costs incurred by the collective.

(e) In determining the share of each service's royalty payments to be distributed to copyright owners who are nonmembers of the designated collective, the collective shall attach the same weight to each performance of a sound recording made by that service; provided, however, that the collective may adopt a distribution methodology that weights each such performance according to its relative value. In determining relative value, the collective may consider factors such as the actual or estimated number of persons who listened to each performance by the service. The collective shall inform the Register of Copyrights of:

(1) The methodology for distributing royalty payments to nonmembers, and any amendment thereto, within 60 days after its adoption;

(2) Any written complaint that the collective receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(3) The final disposition by the collective of any complaint specified by paragraph (e)(2) of this section, within 60 days of such disposition.

Nothing in these rules shall deprive any person from pursuing any remedies they may have under law against the collective.

(f) Commencing June 1, 1998, and until such time as a new designation is made, the collective established by the Recording Industry Association of America, Inc., known as ''Sound Exchange,'' shall receive the royalty payments and statements of account under this part 260. Membership in the collective shall be open on a nondiscriminatory basis to all copyright owners of the rights subject to statutory licensing under 17 U.S.C. 114. In determining whether to make a new designation, the Register of Copyrights may consider any written complaints concerning the collective; provided, however, that the collective shall receive timely notice of, and an opportunity to respond to, any such complaints.

4. Section 260.6 is revised to read as follows:

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which interested parties, as defined in paragraph (g) of this section, may verify the royalty payments made by the designated collective pursuant to § 260.3(c).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the collective making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the collective making the royalty payments. Such notice of intent shall be served at the same time on the collective to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the **Federal Register** a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the

verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the collective which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are:

(1) Those copyright owners who are nonmembers of the collective entitled to receive royalty payments pursuant to § 260.3(c); and

(2) Those persons who are entitled to receive a share of the copyright owners' receipts pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

5. Section 260.7 is amended by removing the phrase ''collecting agent'' each place it appears and adding the word ''entity'' in its place; and in the last sentence, by removing the word ''fees'' and adding the word ''payments'' in its place.

Dated: July 18, 2001.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 01–18339 Filed 7–20–01; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–127–200114, KY–128–200115; FRL–7016–6]

Approval and Promulgation of Implementation Plans; Kentucky State Implementation Plan Revision, Source Specific Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to parallel process approval of revisions to the Kentucky State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOC) at a specific source in Bullitt County, Kentucky, and a specific category of sources in Jefferson County, Kentucky. At the time of final EPA action, the completed SIP revisions must have been submitted to EPA.

In addition, EPA is proposing to approve negative declarations from Kentucky and from the Air Pollution Control District of Jefferson County (APCDJC) for certain categories of sources subject to Control Techniques Guidelines (CTGs).

DATES: Comments on the EPA's proposed action must be received by August 22, 2001.

ADDRESSES: Written comments should be addressed to: Raymond S. Gregory, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. People who are interested and want to examine these documents should make an appointment at least 24 hours in advance of the day they want to visit and they should reference files KY–127 and KY–128; U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403; Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, Environmental Engineer, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–9116,(*Gregory.Ray@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is proposing to approve into the Kentucky SIP two submittals. The first one which was adopted by the APCDJC (Regulation 6.49), specifies VOC reasonably available control technology (RACT) requirements for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). This rule was submitted by Kentucky to EPA on May 10, 2001, for parallel processing. The second submittal concerns source-specific VOC RACT requirements for an offset lithographic paper printing plant, Publisher's Printing, Inc., located in Bullitt County. The VOC RACT requirements for Publisher's Printing, Inc., were submitted by Kentucky on April 16, 2001, and supplemented with a request for parallel processing on May 4, 2001.

EPA received a negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture, and a negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture. A negative declaration is a certification by an organization responsible for air pollution abatement in a state or local area that there are no facilities (a particular category, type, or size) under their jurisdiction in the planning area that meet the definition of an affected facility (i.e., for which specific control requirements would be applicable).

II. Background

Under the Clean Air Act (CAA) section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), all of Jefferson County, portions of Bullitt and Oldham Counties in Kentucky, and the Indiana Counties of Clark and Floyd were designated as the Louisville moderate ozone nonattainment area, as a result of monitored violations of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during the 1987–1989 time frame. Since that time, Kentucky, Indiana and the APCDJC have adopted and implemented programs required under the CAA for a moderate 1-hour ozone nonattainment area to reduce emissions of the precursors of ozone (VOCs and nitrogen oxides). As a result of these programs, air quality monitors in the Louisville area have recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1998, 1999, and 2000 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. On May 17, 2001, (66 FR 27483) the EPA proposed to determine that the Louisville moderate ozone nonattainment area has attained the 1-hour ozone NAAQS. A complete discussion of the data and background that provides the basis for that proposed action can be found in the above-cited May 17, 2001, **Federal Register** action.

Kentucky on March 30, 2001, and Indiana on April 11, 2001, submitted requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. As further indicated in the May 17, 2001 **Federal Register**, the ''determination of attainment'' is not equivalent to redesignation of the area to attainment. Attainment of the ozone 1-hour ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E)