

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2004-7 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: The Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2004 while it completes the transition to a permanent system for the electronic filing of claims. In order to ensure that claims are timely received, claimants are encouraged to file their DART claims on-line or by fax, utilizing the special procedures described in this Notice. Claims filed on-line must be received by the Office no later than 5 p.m. E.S.T. on February 28, 2005.

DATES: Effective January 1, 2005.

ADDRESSES: Claims may be filed on-line through the Copyright Office website at <http://www.copyright.gov/carp/dart/index.html>. Submissions by facsimile should be sent to (202) 252-3423. If hand delivered by a private party, an original and two copies of each claim should be brought to Room LM-401 of the James Madison Memorial Building and the envelope should be addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000 between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, an original and two copies of each claim must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Claims may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries. See **SUPPLEMENTARY INFORMATION** for

information about on-line electronic filing through the Copyright Office website.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney-Advisor, or Abioye Oyewole, CARP Specialist. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:**Background**

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed. 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as on-line submission or facsimile transmission.

Prior to 2002, claims to DART royalties generally were considered timely filed with the Copyright Office

only if they were hand delivered to the correct location within the Copyright Office or mailed to the correct address and bore a January or February U.S. Postal Service postmark. However, in October 2001, concerns about possible anthrax contamination of mail addressed to facilities in the District of Columbia caused severe disruptions of postal service to the Copyright Office. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). Although mail delivery to the Copyright Office resumed, the Office continued to experience delays in the receipt of mail due in part to the diversion of all incoming mail to an off-site location for screening. As a result, the Copyright Office announced alternative methods for the filing of DART claim for the claim years 2001 through 2003. See 67 FR 5213 (February 5, 2002), 67 FR 71477 (December 2, 2002), and 68 FR 74481 (December 24, 2003). Specifically, the Office waived its regulations requiring that claims bear the original signature of the claimant or of a duly authorized representative of the claimant, 37 CFR 259.3(b), to allow the electronic submission of claims, and prohibiting the filing of claims by facsimile transmission, 37 CFR 259.5(d), to allow the submission of claims by facsimile. See 67 FR 5213 (February 5, 2002), 67 FR 71477 (December 2, 2002), and 68 FR 74481 (December 24, 2003).

The electronic submission of claims proved to be popular with claimants and administratively efficient for the Office. This coupled with the fact that the Office's mail will continue to be diverted to an off-site location for screening led the Office to conclude that establishing a permanent system for the electronic filing of claims would be beneficial to claimants and to the Office. Subsequently, the Office announced its intention to issue such regulations in time for the filing of DART claims in January and February 2005. See 69 FR 630577 (May 28, 2004).

Accordingly, the Office proposed and solicited comments on rules establishing a permanent system for the electronic filing of claims, 69 FR 61325 (October 18, 2004), including the use of a Personal Identification Number ("PIN") as a proxy for a signature on claims submitted on-line through the Office's website. See 69 FR 61325, 61326-27 (October 18, 2004). The comments received by the Office raised several issues concerning the proposed PIN system which the Office will not be able to resolve in time to issue final regulations prior to the submission of 2004 DART claims starting in January 2005.

Consequently, the Office is waiving, for the final time, §§259.3(b) and 259.5(d) and allowing the on-line and facsimile submission of DART claims to the 2004 DART royalty funds. On-line forms will be available starting on January 1, 2005, and may be submitted via the Office's website.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2004

Claims to the 2004 DART royalty funds may be submitted as follows:

a. On-line Submission

In order to best ensure the timely receipt by the Copyright Office of DART claims, the Office strongly encourages claimants to file their claims on-line by February 25, 2005, via the Copyright Office website. The Office has devised on-line electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms on-line as provided in the instructions accompanying the forms. DART forms will be posted on the Office website at <http://www.copyright.gov/carp/dart/index.html>. Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January and February 2005. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. During the past three years, claims submitted on-line had to be received by the Office no later than 11:59 p.m. E.S.T. on the last day of February. However, some claimants who filed their 2003 cable and satellite

claims on-line experienced technical difficulties near the end of the filing period. Because the Office was made aware of these difficulties during its normal business hours, the technical problems were rectified quickly. Therefore, to better ensure the swift resolution of technical difficulties in the unlikely event they occur, claims filed on-line must be received by the Office no later than 5 p.m. E.S.T. on February 28, 2005. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered untimely filed. As such, claimants submitting their claims on-line are strongly encouraged to submit their claim no later than February 25, 2005, in order to avoid any unforeseen delays in receipt of claims by the Office.

Claimants filing their claims on-line can ascertain the timeliness of their claim by the receipt of two confirmations. First, immediately after submitting the claim, a confirmation page will appear showing a copy of the claim submitted, noting the attachment of a file, when applicable, and displaying the time and date the claim was submitted. Second, the claimant will receive shortly thereafter an electronic mail message stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. The electronic mail message will show a copy of the claim filed, will contain a copy of the attachment listing the names of joint claimants to a joint claim, when applicable, and will note the time and date of submission. Either confirmation will constitute sufficient proof of a timely filed on-line claim should a question arise regarding timeliness. Therefore, claimants should not consider their claims successfully submitted to the Office until they receive at least one of the two aforementioned forms of official confirmation. If for some reason neither confirmation is received and the claimant is unable to complete the electronic filing process, the claimant should immediately notify the Office of the problem and be prepared to submit a claim by other means such as by hand delivery or by mail in accordance with §259.5.

When filing claims on-line, all provisions set forth in 37 CFR part 259 apply except §259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

b. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252-3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2005. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of §259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

c. Hand Delivery by Private Party

The Office encourages claimants who do not file their claims electronically or by facsimile to deliver their claims personally by 5 p.m. E.S.T. on any business day, during the months of January and February 2005 and no later than February 28, 2005. Claimants are reminded that on June 30, 2004, the Office amended its regulations to reflect the new procedures for delivering items to the Copyright Office, including the filing of claims. 69 FR 39331 (June 30, 2004). Therefore, claimants personally delivering their claims should deliver their claims to the Copyright Office's Public Information Office located at LM-401 of the James Madison Memorial Building. To ensure that the claims are directed to the Office of the General Counsel, an original and two copies of each claim should be placed in an envelope addressed in the following manner: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, LM-401, First and Independence Avenue, S.E., Washington, D.C. 20559-6000. The Public Information Office is open Monday-Friday, 8:30 a.m. to 5 p.m., except federal holidays. 37 CFR 259.5(a)(1).

If a claimant does not address the envelope in accordance with the instructions herein and the envelope is misdirected and consequently does not reach the Public Information Office by 5 p.m. on Monday, February 28, 2005, such claims will be considered as untimely filed and will be rejected. Claimants should also note that the Public Information Office closes promptly at 5 p.m. The Copyright Office will not accept any claim that a claimant attempts to deliver after the Public Information Office has closed.

In addition, claimants hand delivering their claims should note that they must

follow all provisions set forth in 37 CFR part 259.

d. Hand Delivery by Commercial Courier

Section 259.5(a)(2) directs that claims delivered by a commercial courier must be delivered directly to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, N.E. The CCAS will accept items from couriers with proper identification, e.g., a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m. The envelope containing an original and two copies of each claim should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received by CCAS which does not have a date stamp of February 28, 2005, or earlier, will be considered untimely for this filing period and will be rejected by the Copyright Office.

Claimants delivering their claims by commercial courier should note that they must follow all provisions set forth in 37 CFR part 259.

e. By Mail

Section 259.5(a)(3) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after February 28, 2005. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 259.5(e). Claims received after February 28, 2005, dated with only a business meter mark will be rejected as untimely unless the claimant is able to produce the certified mail receipt. See *Universal Studios LLLP v. Peters*, 308 F.Supp.2d 1 (D.D.C. 2004); *Metro-Goldwyn-Mayer Studios, Inc. v. Peters*, 309 F.Supp.2d 48 (D.D.C. 2004).

Claimants should also note that §259.5(a)(4) prohibits the filing of claims by overnight delivery services

such as Federal Express, United Parcel Service, etc. Claimants opting to file their claims by means of overnight delivery must use the Express Mail service provided by the U.S. Postal Service and address the envelope as instructed in this section. Using this service will better ensure the procurement of a January or February postmark and the receipt of the claim by the Office in a timely manner.

However, as noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail by the Copyright Office. Therefore, the Office suggests that claimants use the mail only if none of the other methods outlined above are feasible.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2004 DART royalties. The Office is not waiving the statutory deadline for the filing of DART claims, a deadline the Office has no power to waive. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2005.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, due to the continuing delays in the delivery of mail and the transition to an electronic filing system, the Office believes under these special circumstances the public interest will best be served by waiving, for this filing period, for the final time the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed on-line through the Office's website. See 67 FR at 5214.

Since the Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after

February 25, 2005, see *Locke*, supra, the Office believes the public interest will be served by providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed on-line and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: November 22, 2004.

Marybeth Peters,

Register of Copyrights.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-7840-7]

RIN 2060-AK37

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of Four Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This revision would add four compounds to the list of compounds excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation. This revision will modify the definition of VOC to say that: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃) (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); and methyl formate (HCOOCH₃) will be considered to be negligibly reactive. If you use or produce any of these four compounds and are subject to EPA regulations limiting the use of VOCs in your product, limiting the VOC emissions from your facility, or otherwise controlling your use of VOCs, then you will not count these four compounds as a VOC in determining whether you meet these regulatory obligations. This action may also affect whether these four compounds are considered to be VOCs