

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new temporary § 165.T07–036 to read as follows:

#### § 165.T07–036 Safety Zone; Charleston, SC.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the waters of the Wando River, Cooper River, and Charleston Harbor from the Hobcaw Yacht Club to the Charleston Harbor Marina and from the coast of Mount Pleasant to 150 yards offshore.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting the Regulated Area is prohibited unless authorized by the Coast Guard Captain

of the Port or Coast Guard Patrol Commander.

(c) *Effective Date.* This rule is effective from 7 a.m. until 11 a.m. on May 21, 2005.

Dated: April 18, 2005.

**D.W. Murk,**

*Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Charleston, South Carolina.*

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**BILLING CODE 4910–15–P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 270

[Docket No. RM 2002–1H]

### Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office of the Library of Congress is proposing regulations for the delivery and format of records of use of sound recordings under two statutory licenses of the Copyright Act.

**DATES:** Comments are due no later than May 27, 2005.

**ADDRESSES:** If hand delivered by a private party, an original and ten copies of any comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and ten copies of any comment should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight

delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing such deliveries.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or William J. Roberts, Jr., P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** This Notice of Proposed Rulemaking (“NPRM”) marks another step in the Copyright Office’s continuing efforts to adopt regulations that require eligible digital audio services availing themselves of the statutory licenses set forth in 17 U.S.C. 112 and 114 to report their usage of sound recordings. On March 11, 2004, the Office published interim regulations in the **Federal Register** setting forth the types of information that must be kept by a digital audio service for each copyrighted sound recording it transmits to its users. 69 FR 11515 (March 11, 2004). This information constitutes a record of use of a sound recording. In this document, we propose regulations to establish the format in which each record of use must be kept, along with directions for delivery of the data to the Receiving Agent (SoundExchange, Inc.).<sup>1</sup>

Before discussing the substance of this NPRM, the Copyright Office notes that the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108-419, goes into effect on May 31, 2005. Under this legislation, responsibility for notice and recordkeeping regulations under the section 112 and 114 statutory licenses is transferred from the Librarian of Congress and the Copyright Office to the new Copyright Royalty Judges (“CRJs”). See 17 U.S.C. 114(f)(4)(A) & 112(e)(4) (effective May 31, 2005). It is the intention of the Office to receive comments on the rules proposed below by May 27. It is anticipated that the CRJs will assume responsibility for this ongoing rulemaking proceeding as of May 31 and will consider this notice, the comments received in response to the notice, the prior record of this proceeding and any additional comments that they may solicit as they conclude this rulemaking.

## I. Overview

Digital audio services transmit performances of copyrighted sound recordings of music for the listening

enjoyment of the users of those services. In order to transmit these performances, however, a digital audio service must license the copyrights to each musical work, as well as the sound recording of the musical work.<sup>2</sup> With respect to the copyright in the sound recording, the digital audio service may seek to obtain a licensing agreement directly with the copyright owner or, if it is an eligible service,<sup>3</sup> may choose to license use of the sound recording through statutory licenses set forth in the Copyright Act, title 17 of the United States Code. There are two such licenses that enable an eligible digital audio service to perform a copyrighted sound recording for its listeners: Section 114 and section 112 of the Copyright Act. Section 114 permits an eligible digital audio service to perform copyrighted sound recordings to its listeners, provided that the terms and conditions set forth in section 114 are met—including the payment of a royalty fee. Section 112 permits an eligible digital audio service to make the digital copies of a sound recording that are necessary to transmit a sound recording to listeners, provided again that the terms and conditions set forth in section 112, including the payment of a royalty fee, are met.

The royalty fees collected under the two statutory licenses are paid to a central source known as a Receiving Agent. See 37 CFR 261.2. Before the Receiving Agent,<sup>4</sup> or other agents designated to receive royalties from the Receiving Agent, can make a royalty payment to an individual copyright owner, they must know how many times the eligible digital audio service made use of the sound recording and how many listeners received it. To obtain this information, both section 112 and section 114 direct the Librarian of Congress to prescribe regulations that identify the use of copyrighted sound recordings, as well as provide copyright owners with notice that a particular eligible digital audio service is making use of the section 112 and/or 114

<sup>2</sup> Recorded music typically involves two separate copyrights. There is a copyright for the song itself—the lyrics and the music—and there is a separate copyright for the sound recording of the music. The copyright to the musical work typically belongs to the songwriter and/or his or her music publisher, and the copyright to the sound recording is owned by the record company that recorded it.

<sup>3</sup> These services are defined as preexisting subscription services, preexisting satellite digital audio radio services, business establishment services, nonsubscription services and new subscription services. These services are further discussed, *infra*.

<sup>4</sup> SoundExchange, Inc., originally created by the Recording Industry Association of America, Inc. on behalf of its member companies, is currently the Receiving Agent for receiving both section 112 and 114 royalties.

license. See 17 U.S.C. 112(e)(4) and 114(f)(4)(A).

Interim regulations setting forth the types of information that constitute a record of use of a particular sound recording have already been adopted. 69 FR 11515 (March 11, 2004). Questions remain, however, regarding the organization and format of the record of use data and the acceptable means of delivering that data to the Receiving Agent, SoundExchange. Format and delivery are highly complex technical matters and have been a great source of contention between the parties that have submitted comments in this docket. It was hoped that representatives of copyright owners, performers, and licensees could resolve the issues through private negotiation, and the Copyright Office encourages continued discussions. Nevertheless, we must proceed with regulations. As with the interim regulations adopted last year, the regulations proposed in this document represent the baseline requirements. In other words, digital audio services are free to negotiate other formats and technical standards for data maintenance and delivery and may use those in lieu of regulations adopted by the Copyright Office, provided that SoundExchange finds them acceptable. We have no intention of codifying these variances in the future unless and until they come into such standardized use as to supersede the existing regulations.

## II. Data Contained in a Record of Use

As noted above, the details of the types of information that must be reported for a record of use of a sound recording are set forth in the Interim Regulations. *Id.* For purposes of discussing the format a record of use must take, we summarize the required data elements.

Each record of use must contain at least six separate elements of data identifying the sound recording. The first four mandatory elements are: The name of the digital audio service reporting the record of use; the transmission category code that identifies under what royalty fee the sound recording was used; the name of the featured artist appearing on the sound recording; and the title of the sound recording. For the fifth and sixth reporting elements, services have an option on the information to report. For the fifth element—the identification of the sound recording—services must report the International Standard Recording Code (“ISRC”) solely, or in lieu of the ISRC, they must report the name of the album on which the used sound recording appears plus the name of the company that markets the album.

<sup>1</sup> For more information on the history of this rulemaking proceeding, including comments received from the public and the transcript of a public roundtable, go to <http://www.copyright.gov/carp/114/index.html>.

For the sixth element—total number of performances of the sound recording during the reporting period—services must report the actual total number of performances of the sound recording, or in lieu of that, the “Aggregate Tuning Hours” (total hours of programming transmitted by the service multiplied by the total number of listeners who have accessed the service during the reporting period) plus the name of the channel or program on which the sound recording was performed.

These are pieces of information that are required to create a report of use of a sound recording for the section 112 and/or 114 statutory license. We now turn to how this information is to be organized and formatted.

### III. Organizing and Formatting the Data

The matter of the organization and format in which recordkeeping data is to be maintained for delivery to agents specified in the Copyright Office regulations to receive section 112 and 114 royalties is the subject of considerable disagreement between copyright owners and users. The first issue of dispute is whether services may elect to maintain records in either electronic or hard copy form, or whether reporting must be made in electronic form only. As noted above, the Copyright Office met with representatives of both owners and users after the May 10, 2002, roundtable to discuss the matter of format and solicited written proposals and conducted a public meeting. See 67 FR 59574 (September 23, 2002). During the course of those discussions, the Office expressed the view that transfer of hard copy records of performances would be cumbersome, expensive, and of little or no value to the royalty distribution process. We have not been persuaded otherwise by the written comments submitted in this docket or the subsequent discussions on format of data. Consequently, we are proposing that records of use must be in electronic format and that delivery of physical hard copies of records of use of sound recordings is not acceptable. We welcome further comment.

Having proposed that records of performances must be kept in electronic format, we turn to the details of organizing and formatting the data. Recognizing that there is a wide variance in the technical sophistication of services for creating records of use, the Copyright Office is proposing a two-track approach. For those services with minimal technical sophistication or resources, the Office is proposing that they supply record of use data in a standard electronic spreadsheet format.

For those services that eschew use of a spreadsheet, the Office is proposing the technical requirements for formatting.

#### A. Use of a Spreadsheet

As noted above, there are likely a number of services—noncommercial broadcasters, for example—that lack the technical knowledge or ability to assemble their record of use data and format it according to the requirements set forth in subpart B of this section. For these types of services, the use of a widely marketed electronic spreadsheet, such as Microsoft’s Excel or Corel’s Quattro Pro, will be the most accessible and understandable method for completing a record of use. In order to make use of one of these spreadsheets, it is necessary for services to follow a template that organizes the data elements prescribed by the Interim Regulations in a way acceptable to the needs of SoundExchange. This necessitates that records of use maintained by a service in a spreadsheet format must be converted by the service into an American Standard Code for Information Interchange (“ASCII”) text file that conforms to the format specifications set forth below.

To facilitate the use of spreadsheets by services, the Office is proposing that SoundExchange post on its Web site a template for creating a record of use of sound recordings using Microsoft’s Excel spreadsheet and Corel’s Quattro Pro spreadsheet. SoundExchange may choose to post templates for other spreadsheet programs as well. A service may then use the corresponding spreadsheet software and enter its record of use data as provided by the template. Any technical support necessary for the establishment and use of spreadsheets is the responsibility of the service and not SoundExchange.

#### B. Format Specifications

What follows is a description of the format specifications that the Office proposes must be followed by services in preparing a record of use for delivery to SoundExchange, whether the records are in an electronic spreadsheet or some other organizational format chosen by the service. In proposing these regulations, the Office was guided by one of the few points of agreement to arise from the written and oral comments submitted in this docket. There are no universal methods of operation or uniform business standards for services making use of the section 112 and 114 licenses. Some services are highly automated, employing computers and software that allow them to readily generate play lists and detailed information in electronic format

regarding the sound recordings that they perform. Others possess less sophisticated equipment that utilize varying data storage formats. Accordingly, the Office proposes that services be permitted to elect from several means of delivering their records of use to SoundExchange and that services be permitted to elect whether to submit files with or without headers. Services that wish to use different formats or different means of delivery may do so with the consent of SoundExchange.

The Office proposes to adopt organization and formatting requirements that represent the essentials for creating records of use of the records once they have been created. Our purpose in electing such approach is to provide SoundExchange with the information it needs to distribute royalties collected under the section 112 and 114 licenses, but also permit significant flexibility to those services which possess greater sophistication and can deliver data in faster and more convenient ways. Several of the commenters in this docket have stated that they have developed, or are in the process of developing, computer software and operating systems that will readily permit the recording and delivery of highly detailed information regarding the use of sound recordings. Provided that these software programs and operating systems are compatible with the systems of the receiving and designated agents collecting monies under the section 112 and 114 licenses, they should be permitted and encouraged. The Office encourages the continued use and development of alternatives that reduce the burden and operating expenses of both the services creating the data and the agents receiving it.

1. *File Naming.* Every file containing records of use must be appropriately named. The file name should contain the name of the service submitting the file followed by the start and end date of the reporting period. The start date and end date should be separated by a dash, and the file name should end with a file type extension of “.txt”. Starting and ending dates should be in the format of day, month and year (DDMMYYYY) where DD is the two-digit day of the log period (beginning or end); MM is the two-digit month of the log period; and YYYY is the four-digit year of the log period (beginning or end). Single-digit days and months should be preceded by a zero (e.g. The first day of January of 2004 should be identified as 01012004).

The following is an example of a complete file name:

*AcmeMusicCo10102004-30042004.txt.*

2. *File type.* As discussed above, all files must be delivered in ASCII format. This applies to records of use that are maintained by a service in spreadsheet format, as well as any other data format that a service employs for its records of use. Files must not be attributed with any operating system settings that do not allow the file to be read using widely used Extract, Transform and Load (“ETL”) software (e.g. Oracle SQL Loader, Informatica, Sagent, Teradata, etc.).

3. *File compression.* Each report of use should be compressed in one of the following formats:

.zip—generated using utilities such as WinZip and/or UNIX zip command

.Z—generated using UNIX compress command

.gz—generated using UNIX gzip command

The zipped file should follow the same naming convention described in B1 above. However, instead of the “.txt” file extension, the file extension should be one of the above-described compression names.

4. *Delivery mechanism.* The Copyright Office is proposing four separate means for delivery of data to receiving and designated agents. As with the other provisions of these proposed regulations, parties are encouraged to negotiate alternative acceptable means of delivery if the prescribed methods discussed below are not acceptable.

Of the four acceptable methods of data delivery, two are by electronic delivery (FTP and e-mail) and two are by physical delivery (CD-ROM and Floppy Diskette). The Copyright Office has considered permitting delivery of data files via Internet Web site, but there appear to be significant issues regarding security of data delivered to Web sites and who would bear the burden of assuring security is maintained. We welcome further comment on this issue.

a. *File Transfer Protocol (FTP).* File Transfer Protocol is an electronic delivery mechanism that permits services using the section 112 and 114 licenses to deposit a computer file on a password-secured site operated by a receiving or designated agent. A service choosing FTP as the means of data file delivery must obtain a username and password, plus specific instructions for delivery, from the receiving or designated agent to which data is being sent. The Office is proposing that no later than 60 days from publication of final regulations SoundExchange be required to post on a publicly available

portion of its Web site instructions for applying for a username and password and access and delivery instructions for FTP delivery. The Office proposes that once a written request has been made for a username and password, SoundExchange shall have 15 days to respond.

b. *Electronic mail (e-mail).* The other acceptable means of electronic delivery of record of use files is electronic mail (e-mail). A record of use file may be appended to an e-mail as an attachment and sent to the e-mail address identified for SoundExchange. The main body of the e-mail should identify: (1) The full name of the service and its full address; (2) the name of a contact person and that person’s telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise, beginning with row 1); and (5) the name of the file attached.

Unlike delivery to an FTP site, there are frequently file size limitations imposed by the Internet Service Provider offering the e-mail service. To avoid the problems likely to be associated with e-mailing large files, the Copyright Office is proposing to limit the size of file attachments to ten megabytes. Services may compress their files using the data compression methods described above in order to satisfy the ten-megabyte limitation.

Upon receipt of a report of use, the Office is proposing that SoundExchange acknowledge receipt of the e-mail as soon as possible through use of an automated reply e-mail to the delivering party.

c. *Compact Disk-Read Only Memory (CD-ROM).* A report of use contained on a Compact Disk-Read Only Memory (CD-ROM) should be delivered to the addresses identified below for SoundExchange. The data file must be sufficiently compressed to fit onto a single CD-ROM per reporting period. Each CD-ROM submitted shall be accompanied by a cover letter identifying: (1) The full name and address of the service; (2) the name of a contact person and that person’s telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise beginning with row 1); and (5) the name of the file attached.

d. *Floppy diskette.* A report of use contained on a floppy diskette that measures 3.5 inches in diameter should be delivered to the addresses identified for the receiving and designated agents. The diskette should be formatted using

MS/DOS and be contained on a single diskette. No more than one floppy diskette may be submitted per reporting period. The diskette must be accompanied by a cover letter identifying: (1) The full name and address of the service; (2) the name of a contact person and that person’s telephone number and e-mail address; (3) the start and end date of the reporting period; (4) the number of rows in the data file (if using headers, beginning with row 15; otherwise, beginning with row 1); and (5) the name of the file attached.

5. *Delivery addresses.* All reports of use should be delivered to SoundExchange at the following address: SoundExchange, Inc., 1330 Connecticut Avenue, NW., #330, Washington, DC 20036; (Phone) (202) 828-0120, (Facsimile) (202) 833-2141, (E-mail) [info@soundexchange.com](mailto:info@soundexchange.com); <http://www.soundexchange.com>. For those services choosing to use CD-ROMs or floppy diskettes which require physical delivery to SoundExchange, the Copyright Office does not propose to specify whether delivery should be by hand, by courier or by U.S. mail. It is recommended, however, that services elect a type of delivery service that provides proof that the data file was sent in a timely fashion (e.g. certified mail, return receipt requested). It is the responsibility of the service to assure that its report of use is delivered on time to SoundExchange.

6. *File contents.* SoundExchange proposes that data files be reported with or without headers at the discretion of the service. The services find the option attractive; and consequently, the Office is inclined to permit the reporting of data either with or without headers.

In reporting data files, the issue arises as to how many separate files of data should be allowed for each reporting period. SoundExchange desires only one file per statutory license. Services, in particular broadcaster services, would like to submit multiple files of data and require the agent receiving data to match up, or overlay, the data from one file to another. For example, the National Religious Broadcasters Music Licensing Committee (“NRBMLC”) and Salem Communications Corp. submit that data identifying artists, song titles, albums and marketing labels could be reported in one file, while the data concerning the number of performances of the sound recordings could be reported in another file. Comments of NRBMLC and Salem Communications Corp. at 4-5 (submitted September 30, 2002). They submit that reporting in separate files is necessary because information regarding the number of

performances of sound recordings will come from a different source than the identifying information for the sound recordings. Allowing submission of multiple files of data will, in our view, unduly burden the agent processing the data and likely result in confusion and a high error rate in attempting to overlay the data. While reporting data in multiple files is undoubtedly easier for some services, they have not yet demonstrated that such a practice can be done efficiently without significant error and expense to the processing agent. We welcome further comment from the services as to a solution to this problem.

a. Files with headers. Submission of data with headers is an issue of considerable disagreement between SoundExchange and certain services using the section 112 and 114 licenses. See, e.g. Comments of SoundExchange at Tab A (submitted September 30, 2002); Comments of NRBMLC and Salem Communications Corp. at 4–6 (submitted October 10, 2002). While the parties agree that submission of files with headers should be permitted, the disagreements occur over the information to be contained in the headers. SoundExchange proposes that every report of use of a sound recording be prefaced with a header that contains 13 separate rows of information, most of which is devoted to identifying the service submitting the report. Certain services counter that submission of identification information for each report is redundant and unnecessary. Comments of NRBMLC and Salem Communications Corp. at passim (submitted October 10, 2002). They advocate a “flexible” approach to headers that only identifies the fields of data being reported (*i.e.* artist, song title, album, etc.) and permits such headers to be embedded in the file as the first line of data or provided in a separate file. Further, they advocate that output files generated by a service’s music scheduling or digital automation software should be deemed acceptable if they contain headers identifying the data fields contained therein. Comments of NRBMLC and Salem Communications Corp. at Tab A, pp. 3–4 (submitted September 30, 2002).

In attempting to resolve this dispute, the Copyright Office observes that while a balancing of both owner and user interests is desirable, we are ultimately charged with the task of creating a system that will work. We have repeatedly encouraged the parties to negotiate the formatting of data for records of use but without success. Broadcaster services assert that their recordkeeping will be in multiple

formats and that they cannot comply with a single standard. SoundExchange asserts that its system will not work unless the format it proposes is adopted. Because the statute requires us to adopt record of use regulations that will facilitate the distribution of royalties to copyright owners of sound recordings, we propose to adopt SoundExchange’s recommendation for files with headers. In taking this approach, the Office observes that services which find the requirements for files with headers to be unduly burdensome may instead choose to submit their data without headers as provided in subsection (b) below.

A file with headers is a file that contains, among other things, information identifying the service, the period for which data is being provided and column headers that identify the data elements in each column. The following elements shall occupy the first 13 rows of each report of use in the order specified below.

(i) Name of service. The first row of a report with headers should contain the full name of the service making the report. Example: Acme Music Service, Inc. The maximum length and description of the service name should not exceed 255 alphanumeric characters.

(ii) Contact person. The second row of a report with headers should contain the full name of the contact person responsible for technical matters related to the submission of the report of use. The maximum length and description of the contact person should not exceed 255 alphanumeric characters.

(iii) Street address. The third row of a report with headers should contain the full business street address of the service submitting the report of use. The “#” symbol should be used to indicate suite or room numbers in the street address. The maximum length and description of the street address should not exceed 255 alphanumeric characters.

(iv) City, state and zip code. The fourth row of a report with headers should contain the city, state and zip code of the service submitting the report of use. The maximum length and description of the city, state and zip code should not exceed 255 alphanumeric characters.

(v) Phone number. The fifth row of a report with headers should contain the phone number of the contact person for technical issues of the service submitting the report. The maximum length and description of the phone number should not exceed 255 alphanumeric characters.

(vi) E-mail address. The sixth row of a report with headers should contain the

e-mail address for the contact person for technical issues of the service submitting the report. The maximum length and description of the e-mail address should not exceed 255 alphanumeric characters.

(vii) Start of reporting period. The seventh row of a report with headers should contain the beginning date of the reporting period for the service submitting the report.<sup>5</sup> The date should include the day, followed by the month followed by the year (DDMMYYYY). Single-digit days or months should be preceded by a zero. Example: the first day of January 2006 should appear as 01012006. Thus, the length of the start of the reporting period should be eight numeric characters.

(viii) End of reporting period. The eighth row of a report with headers should contain the last or ending date of the reporting period (*i.e.* March 31, June 30, September 30 or December 31). As with the starting date, the date should be eight numeric characters with the day, month and year in that order.

(ix) Report generation date. The ninth row of a report with headers should contain the date that the report was generated by the service submitting the report. The date should be consistent with the file generation date tagged to the zipped container file or the report file and be expressed in the eight numeric DDMMYYYY format described above.

(x) Number of rows. The tenth row of a report with headers should contain the total number of rows beyond the fourteenth row in the file. The first 13 rows of each report file are for the header information only, and the fourteenth row is for the column headers described below. There is no limitation on the maximum length and description of the number of rows.

(xi) Text indicator. The eleventh row of a report with headers is the identification of the character that delineates the beginning and end of a text field. The text indicator is a one-character symbol that must be unique and never found in the report’s data content. While the Copyright Office is not specifying the text indicator at this time, it is recommending the adoption of the carat (“^”) symbol as an appropriate text indicator. The text indicator differs from a delimiter because it is only found at the beginning and end of a text field. Examples: ^Sound Recording Title ^; ^Featured Artist ^. Numbers and dates never have text indicators.

<sup>5</sup> The reporting periods are each calendar quarter of the year—*i.e.* the quarters beginning January 1, April 1, July 1 and October 1.

In addition, text indicators must be used even when certain text elements are not being reported. For example, if the service does not have information for the Marketing Label for a sound recording, the service should denote the missing data with a sequence of two consecutive text indicators to show that no text for the field is available (i.e. “^^”).

(xii) Field delimiter. The twelfth row of a report with headers is the identification of the character that delineates the end of a data field. It differs from a text indicator because it is found at the end of both text fields and numeric fields. Field delimiters should not be placed at the end of the last data element in a row of data. The field delimiter character must be unique and never found in the report’s data content. As with the text delimiter, the Copyright Office is not specifying the field delimiter at this time, but does recommend adoption of the pipe (“|”) as

an appropriate field delimiter. Delimiters must be used even when certain elements are not being reported. In this case, the service should denote the blank data field with a delimiter in the order in which it would have appeared.

(xiii) Blank line. The thirteenth row of a report with headers is the carriage return and should be left blank.

The above describes the required first 13 rows of a report with headers. The fourteenth row should contain the report headers which are prescribed in the Interim Regulations (Featured Artist, Sound Recording Title, Marketing Label, etc.). See 37 CFR 270.1 *et seq.*

Underscores (“\_”) should appear in the report header between elements of each field name to show separation in the data field titles. Report header file names should be listed using the same text indicator and field delimiter indicated in the header.

The fifteenth row of the data file is where the actual records of use of sound

recordings shall begin to appear. The data text fields should be reported in upper case characters. All featured performers should be reported as FIRST NAME\_LAST NAME, where the name of the featured performer is an individual. Abbreviations are not permitted. Services should take care in providing data that conforms with the data that appeared on the physical product containing the sound recording that was supplied to or used by the service, and avoid using colloquialisms or short-handed methods of data entry (ex. “JENNIFER\_LOPEZ” is the correct data entry for the artist, not “J\_LO”).

A carriage return must be at the end of each line and all data for one sound recording must be on a single line.

The following is a table summarizing the first 13 rows of a file with headers, including identification of the data that is required for each field, followed by an example.

Row No. (Do not include row numbers)	Field definition (Do not include field definition description)	Example
1 .....	Service full name .....	ACME MUSIC SERVICE.
2 .....	Contact Person .....	JOHN DOE.
3 .....	Street Address .....	1000 WASHINGTON STREET.
4 .....	City, State, Zip .....	WASHINGTON, DC 10000.
5 .....	Phone .....	202-555-1212.
6 .....	E-mail .....	DOE@ACMEMUSIC.COM.
7 .....	Start of Reporting Period (DDMMYY) .....	01012006.
8 .....	End of Reporting Period (DDMMYY) .....	31032006.
9 .....	Report Generation Date (DDMMYY) .....	15042006.
10 .....	Number of rows .....	60000.
11 .....	Text Indicators .....	^^.
12 .....	Field delimiters .....	.
13 .....	Blank line.	

b. Files without headers. The previous regulation adopted by the Copyright Office for records of use by preexisting subscription services, 37 CFR 270.2(g), specifies the reporting of data without headers. These provisions have operated successfully, and the Office is proposing that they be adopted in this docket with some slight modifications to avoid duplication of information. Data files without headers should meet the following format requirements:

- (1) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;
- (2) Carets (^) should surround strings;
- (3) No carets (^) should surround dates and numbers;
- (4) A carriage return must be at the end of each line;
- (5) All data for one record should be on a single line; and
- (6) Abbreviations within data fields are not permitted (ex. The artist “JOHN

LEE HOOKER” should not be abbreviated as “J.L. HOOKER”).

All text fields should be reported in upper case characters (ex. “THE ROLLING STONES”). All featured performers should be reported as FIRST NAME\_LAST NAME, where the name of the featured performer is the name of an individual. Services should take care in providing data that conforms with the data that appeared on the physical product containing the sound recording that was supplied to or used by the service, and avoid using colloquialisms or short-hand methods of data entry (ex. “JENNIFER\_LOPEZ” is the correct data entry for the artist, not “J\_LO”).

The following are two examples of a file without headers reporting a record of use of the sound recording “Mixed Emotions” by the Rolling Stones. In the first example, the Acme Music Service is reporting the Album Title and the Marketing Label in lieu of the

International Sound Recording Code (“ISRC”) and is reporting Actual Total Performances in lieu of Aggregate Tuning Hours (“ATH”), Channel or Program Name and Play Frequency. See 69 FR 11515, 11524 (March 11, 2004). In the second example, My Music Service is reporting the ISRC in lieu of the Album Title and Market Label and is reporting ATH in lieu of the Actual Total Performances. *Id.*

**Example #1**

```
^ACME MUSIC SERVICE^F^THE
ROLLING STONES^| MIXED
EMOTIONS^| ^STEEL WHEELS^|
^VIRGIN^| 100.00^| |
```

**Example #2**

```
^MY MUSIC SERVICE^F^THE
ROLLING STONES^| MIXED
EMOTIONS^|^
USSM12345678^| | 7650.00
|^ROCK^| 25.00
```

**List of Subjects in 37 CFR Part 270**

Copyright, Sound recordings.

**Proposed Regulations**

In consideration of the foregoing, the Copyright Office is proposing to amend part 270 of 37 CFR to read as follows:

**PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES**

1. The authority citation for part 270 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Paragraph (a) in § 270.2 is revised to read as follows:

**§ 270.2 Reports of use of sound recordings under statutory license for preexisting subscription services.**

(a) *General.* This section prescribes the rules for the maintenance and delivery of reports of use for sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by preexisting subscription services.

\* \* \* \* \*

3. Section 270.3 is amended as follows:

- a. By revising paragraph (a); and  
b. By adding a new paragraph (d).

The revision and addition read as follows:

**§ 270.3 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.**

(a) *General.* This section prescribes rules for the maintenance and delivery of reports of use of sound recordings under section 112(e) or section 114(d)(2) of title 17 of the United States Code, or both, by nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services, and business establishment services.

\* \* \* \* \*

(d) *Format and Delivery.* (1) *Electronic format only.* Reports of use must be maintained and delivered in electronic format only, as prescribed in paragraphs (d)(2) through (8) of this section. A hard copy report of use is not permissible.

(2) *Use of spreadsheet.* Commercially available spreadsheets (Examples: Microsoft Excel, Corel Quattro Pro) may be utilized for maintaining reports of use: *Provided*, that the spreadsheet format is converted into an ASCII text file that conforms to the format specifications set forth below. SoundExchange shall post and maintain on its Internet website a template for

creating a report of use using Microsoft's Excel spreadsheet and Corel's Quattro Pro spreadsheet and instruction on how to convert such spreadsheets to ASCII text files that conform to the format specifications set forth below. However, technical support and cost associated with the use of spreadsheets is the responsibility of the service submitting the report of use.

(3) *Delivery mechanism.* The data contained in a report of use may be delivered by File Transfer Protocol (FTP), e-mail, CD-ROM, or floppy diskette according to the following specifications:

(i) A service delivering a report of use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall not later than [DATE 60 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] post on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A service delivering a report of use via e-mail shall append the report as an attachment to the e-mail. The main body of the e-mail shall identify:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iii) A service delivering a report of use via CD-ROM must compress the reporting data to fit onto a single CD-ROM per reporting period. Each CD-ROM shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, counting of the rows should begin with row 1; and

(E) The name of the file attached.

(iv) A service delivering a report of use via floppy diskette must compress the reporting data to fit onto a single

floppy diskette per reporting period. Each floppy diskette must measure 3.5 inches in diameter and be formatted using MS/DOS. Each floppy diskette shall be submitted with a cover letter identifying:

(A) The full name and address of the service;

(B) The contact person's name, telephone number and e-mail address;

(C) The start and end date of the reporting period;

(D) The number of rows in the data file. If the report of use is a file using headers, counting of the rows should begin with row 15. If the report of use is a file without headers, the counting of the rows should begin with row 1; and

(E) The name of the file attached.

(4) *Delivery address.* Reports of use shall be delivered to SoundExchange at the following address: SoundExchange, Inc., 1330 Connecticut Avenue, NW., #330, Washington, DC 20036; (Phone) (202) 828-0120; (Facsimile) (202) 833-2141; (E-mail) [info@soundexchange.com](mailto:info@soundexchange.com).

(5) *File naming.* Each data file contained in a report of use must be given a name by the service followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of day, month and year (DDMMYYYY). Each file name must end with the file type extension of ".txt". (*Example:* AcmeMusicCo01012005-31032005.txt).

(6) *File type and compression.* (i) All data files must be in ASCII format. Files may not be attributed with any operating system settings that do not allow the file to be read using widely used Extract, Transform and Load (ETL) software.

(ii) A report of use must be compressed in one of the following formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

Zipped files shall be named in the same fashion as described in paragraph (d)(5) of this section substituting the ".txt." file extension with the applicable compression name described in this paragraph.

(7) *Files with headers.* (i) If a service elects to submit files with headers, the following elements, in order, must occupy the first 14 rows of a report of use:

(A) Name of service;

(B) Name of contact person;

(C) Street address of the service;

(D) City, state and zip code of the service;

(E) Telephone number of the contact person;

(F) E-mail address of the contact person;

(G) Start of the reporting period (DDMMYYYY);

(H) End of the reporting period (DDMMYYYYY);

(I) Report generation date (DDMMYYYYY);

(J) Number of rows data file, beginning with 15th row;

(K) Text indicator;

(L) Field delimiter;

(M) Blank line; and

(N) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (d)(7)(i)(A) through (F) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (d)(7)(i)(G) through (I) of this section should not exceed eight alphanumeric characters. There is no limitation on the maximum length and description in paragraph (d)(7)(i)(J) of this section.

(iii) Data text fields, as required by paragraph (c) of this section, begin on row 15 of a report of use with headers. The data text fields must be in upper case characters and a carriage return must be at the end of each row thereafter.

(8) *Files without headers.* If a service elects to submit files without headers, the following format requirements must be met:

(i) ASCII delimited format, using pipe (|) characters as delimiters, with no headers or footers;

(ii) Carats (^) should surround strings;

(iii) No carats (^) should surround dates and numbers;

(iv) A carriage return must be at the end of each line;

(v) All data for one record must be on a single line;

(vi) Abbreviations within data fields are not permitted; and

(vii) All text fields must be reported in upper case characters.

Dated: April 22, 2005.

**David O. Carson,**

*General Counsel.*

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**BILLING CODE 1410-33-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-VA-0001; FRL-7904-6]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO<sub>x</sub> RACT Determinations for Four Individual Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia to establish and require reasonably available control technology (RACT) for four major sources of nitrogen oxides (NO<sub>x</sub>). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by May 27, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0001 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [campbell.david@epa.gov](mailto:campbell.david@epa.gov).

D. Mail: R03-OAR-2005-VA-0001, Campbell David, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to RME ID No. R03-OAR-2005-VA-0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.