Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 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.lD, 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 because it establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

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 amends 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, 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. A temporary section 165.T13–043 is added to read as follows:

§ 165.T13–043 Safety Zone: Lower Cowlitz River Dredging Operation in the Captain of the Port Portland Zone.

(a) *Safety Zone.* The following area is designated a safety zone—

(1) *Location.* The waters encompassed by the following points: 46° 05′50″N 122° 55′52″W southeastward to 46° 05′30″N 122° 55′11″W turning northwest to 46° 05′44″N 122° 54′19″W continuing along the southeasterly bank of the Cowlitz River to 46° 06′34″N 122° 53′27″W crossing the river bank to bank to 46° 06′33″N 122° 53′35″W following the northerly bank of the Cowlitz River back to the point of origin. This safety zone will include the entrance to Carrols Channel and the Old Mouth Cowlitz.

(2) *Effective time and date.* 8 a.m. on Monday, November 12, 2007 to 5 p.m. on Friday, February 29, 2008.

(b) *Regulations.* (1) Entry into this Safety Zone is prohibited unless authorized by the Captain of the Port, his designated representative, or the Master of the on-scene dredge vessel.

(2) Transit through the Safety Zone is prohibited without an escort from a vessel associated with the on-scene dredge operations or a representative of the Captain of the Port.

(3) To request an escort to transit the Safety Zone contact the on-scene dredge Master on VHF–FM channel 16 or 13 or via search light or sound making device 30 minutes in advance of desired transit.

Dated: November 9, 2007.

Russell C. Proctor,

CDR, U.S. Coast Guard, Acting Captain of the Port, Portland, OR.

[FR Doc. E7–24768 Filed 12–19–07; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 383

[Docket No. 2005–5 CRB DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations that set the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing from the inception of the new subscription service through December 31, 2010.

DATES: These regulations become effective on January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law No. 104–39, which created an exclusive right for copyright owners of sound recordings subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 (''DMCA'' or ''the Act''), Public Law No. 105–304, to cover additional digital audio transmissions. These include transmissions made by ''new subscription services.'' For purposes of the section 114 license, a ''new subscription service'' is ''a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.'' 17 U.S.C. 114(j)(8).

In addition to expanding the section 114 license, the DMCA also created a statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by new subscription services. 17 U.S.C. 112(e).

On October 31, 2005, pursuant to section 114(f)(2)(C), XM Satellite Radio, Inc. (''XM'') filed with the Copyright Royalty Judges (''Judges'') a Petition to Initiate and Schedule Proceeding for a New Type of Subscription Service for a ''new type of subscription service [which] performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a 'basic' package of service and not for a separate fee.'' XM Petition at 1. The petition noted that this new subscription service was to commence on or about November 15, 2005. Id.

On December 5, 2005, pursuant to 17 U.S.C. 804(b)(3)(C)(ii), the Judges published a notice in the **Federal Register** announcing commencement of the proceeding to set rates and terms for royalty payments under sections 114 and 112 for the activities of the new subscription service described in the XM Petition and requesting interested parties to submit their Petitions to Participate. 70 FR 72471. Petitions to participate were received from Sirius Satellite Radio, Inc. (''Sirius''), XM, MTV Networks (''MTV''), and SoundExchange, Inc.

The Judges set the schedule for the proceeding for both the direct and rebuttal phases of the proceeding, including the dates for the filing of the written statements and the dates for oral testimony for each phase. Subsequent to the presentation of the direct phase of their case and the filing of their written rebuttal statements, but prior to the oral presentation of their rebuttal witnesses, the parties informed the Judges that they had ''reached full agreement on all issues in this litigation'' and that ''there are no more issues to try.'' Transcript of September 10, 2007, at p. 5. They also stated that the settlement agreement would be submitted to the Judges for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A). Id. at 6. The proposed rates and terms codifying the settlement agreement were filed on October 30, 2007.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on November 9, 2007, the Judges published a Notice of Proposed Rulemaking (''NPRM'') requesting comment on the proposed rates and terms submitted to the Judges. 72 FR 63532. Comments were due by December 10, 2007. In response to the NPRM, the Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing from the inception of the new subscription service through December 31, 2010.[1]

[1] Section 383.4(a) states that the terms governing the activities of a new subscription service under sections 114 and 112 are the same as those, unless otherwise specified, adopted to govern the activities of the preexisting satellite digital audio radio services in Docket No. 2006–1 CRB DSTRA. Those terms will appear in Subpart B of 37 CFR part 382, which will be published in a separate document.

List of Subjects in 37 CFR Part 383

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding part 383 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY NEW SUBSCRIPTION SERVICES

Sec.

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 General.

(a) *Scope.* This part 383 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of certain ephemeral recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period commencing from the inception of the Licensees' Services and continuing through December 31, 2010.

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections and the rates and terms of this part.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this part to transmissions with the scope of such agreements.

§ 383.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Applicable Period* is the period for which a particular payment to the

designated collection and distribution organization is due.

(b) *Bundled Contracts* means contracts between the Licensee and a Provider in which the Service is not the only content licensed by the Licensee to the Provider.

(c) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g).

(d) *License Period* means the period commencing from the inception of the Licensees' Services and continuing through December 31, 2010.

(e) *Licensee* is a person that has obtained statutory licenses under 17 U.S.C. 112 and 114, and the implementing regulations, to make digital audio transmissions as part of a Service (as defined in paragraph (h) of this section), and ephemeral recordings for use in facilitating such transmissions.

(f) *Provider* means a ''multichannel video programming distributor'' as that term is defined in 47 CFR 76.1000(e); notwithstanding such definition, for purposes of this part, a Provider shall include only a distributor of programming to televisions, such as a cable or satellite television provider.

(g) *Revenue.* (1) ''Revenue'' means all monies and other considerations, paid or payable, recognizable during the Applicable Period as revenue by the Licensee consistent with Generally Accepted Accounting Principles (''GAAP'') and the Licensee's past practices, which is derived by the Licensee from the operation of the Service and shall be comprised of the following:

(i) Revenues recognizable by Licensee from Licensee's Providers and directly from residential U.S. subscribers for Licensee's Service;

(ii) Licensee's advertising revenues recognizable from the Service (as billed), or other monies received from sponsors of the Service if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Revenues recognizable for the provision of time on the Service to any third party;

(iv) Revenues recognizable from the sale of time to Providers of paid programming, such as infomercials, on the Service;

(v) Where merchandise, service, or anything of value is receivable by Licensee in lieu of cash consideration for the use of Licensee's Service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration recognizable as revenue by Licensee from Licensee's Providers, but not including revenues recognizable by Licensee's Providers from others and not accounted for by Licensee's Providers to Licensee, for the provision of hardware for the Service by anyone and used in connection with the Service;

(vii) Monies or other consideration recognizable as revenue for any references to or inclusion of any product or service on the Service; and

(viii) Bad debts recovered regarding paragraphs (g)(1)(i) through (vii) of this section.

(2) ''Revenue'' shall include such payments as set forth in paragraphs (g)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid or payable to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's Providers for the Service. Licensee shall be allowed a deduction from ''Revenue'' as defined in paragraph (g)(1) of this section for bad debts actually written off during the reporting period.

(h) A *Service* is a non-interactive (consistent with the definition of ''interactive service'' in 17 U.S.C. 114(j)(7)) audio-only subscription service (including accompanying information and graphics related to the audio) that is transmitted to residential subscribers of a television service through a Provider which is marketed as and is in fact primarily a video service where

(1) Subscribers do not pay a separate fee for audio channels.

(2) The audio channels are delivered by digital audio transmissions through a technology that is incapable of tracking the individual sound recordings received by any particular consumer.

(3) However, paragraph (h)(2) of this section shall not apply to the Licensee's current contracts with Providers that are in effect as of the effective date of this part if such Providers become capable in the future of tracking the individual sound recordings received by any particular consumer, provided that the audio channels continued to be delivered to Subscribers by digital audio transmissions and the Licensee remains incapable of tracking the individual sound recordings received by any particular consumer.

(i) *Subscriber* means every residential subscriber to the underlying service of the Provider who receives Licensee's Service in the United States for all or any part of a month; provided, however, that for any Licensee that is not able to track the number of subscribers on a per-day basis, ''Subscribers'' shall be calculated based on the average of the number of subscribers on the last day of the preceding month and the last day of the applicable month, unless the Service is paid by the Provider based on end-of-month numbers, in which event ''Subscribers'' shall be counted based on end-of-month data.

(j) *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) *Royalty rates.* Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions, are as follows. Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, the greater of:

(i) 15% of Revenue, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee—

(A) From inception through 2006: $0.0075
(B) 2007: $0.0075
(C) 2008: $0.0075
(D) 2009: $0.0125
(E) 2010: $0.0150 and

(2) For Bundled Contracts, the greater of:

(i) 15% of Revenue allocated to reflect the objective value of the Licensee's Service, or

(ii) The following monthly minimum payment per Subscriber to the Service of such Licensee:

(A) From inception through 2006: $0.0220
(B) 2007: $0.0220
(C) 2008: $0.0220
(D) 2009: $0.0220
(E) 2010: $0.0250

(b) *Minimum fee.* Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars ($100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112 and 114 statutory licenses, but payable pursuant to the applicable regulations for all years 2007 and earlier. Such fee shall be recoupable and credited against royalties due in the calendar year in which it is paid.

§ 383.4 Terms for making payment of royalty fees.

(a) Subject to the provisions of this section, terms governing timing and due dates of royalty payments, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties, unclaimed funds, designation and definition of the collection and distribution organization, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in Docket No. 2006–1 CRB DSTRA (''the SDARS Proceeding'').

(b) Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) If the Copyright Royalty Judges adopt reports of use regulations in the SDARS Proceeding, those regulations, if any, shall govern Licensees' obligations to report sound recordings used pursuant to this part, except that Licensees also shall report to SoundExchange which channels are transmitted by their respective Providers for all past, current and future periods. In the event that the Copyright Royalty Judges do not adopt reports of use regulations in the SDARS Proceeding, then reports of use provided by XM Satellite Radio, Inc. (''XM'') and Sirius Satellite Radio, Inc. (''Sirius'') for their use of sound recordings on their preexisting satellite digital audio radio services (as defined in 17 U.S.C. 114(j)(10)) shall be deemed to satisfy XM's and Sirius' obligations to report sound recordings used pursuant to this part, and MTV Networks shall provide census reporting, retroactive to the inception of its Service.

Dated: December 14, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–24734 Filed 12–19–07; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R05–OAR–2007–0519; FRL–8508–1]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a revision to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for the state of Michigan, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Michigan's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is conditionally approving is an abbreviated SIP revision that addresses: The applicability provisions for the NO_X ozone season trading program under the CAIR FIP and supporting definitions of terms; the methodology to be used to allocate NO_X annual and ozone season NO_X allowances under the CAIR FIP and supporting definitions of terms; and provisions for opt-in units under the CAIR FIP. Michigan will be submitting additional SO_2 rules in the future.

DATES: This rule is effective *December 20, 2007*.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0519. All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking?

CAIR SIP Approval

EPA is conditionally approving a revision to Michigan's SIP, submitted on July 16, 2007, that would modify the application of certain provisions of the CAIR FIP concerning NO_X annual and NO_X ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) EPA proposed to conditionally approve Michigan's submittal on September 12, 2007 (72 FR 52038). The CAIR SO_2 FIP will remain in place unaffected. Michigan is subject to the CAIR FIP that implements the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs. The CAIR FIP provides that this methodology will be used to allocate NO_X allowances to sources in Michigan, instead of the federal allocation