

and Special Use Authorization approvals on NFS lands that involve analysis, documentation, and other requirements of the NEPA are subject to agency appeal procedures, currently under 36 CFR part 215. If an appeal is filed, the FS must respond within 45 days and operations must not occur for 15 days following the date of appeal disposition.

FS regulations at 36 CFR part 251 govern appeals of written decisions of the FS related to issuance, denial, or administration of written instruments to occupy and use NFS lands. A list of the types of written instruments is provided at 36 CFR 251.82, and includes an SUA and Surface Use Plan of Operations related to the authorized use and occupancy of a particular site or area.

The operator may appeal decisions of the BIA under 25 CFR part 2.

Attachment I—Sample Format for Notice of Staking

Attachment I—Sample Format for Notice of Staking

(Not to be used in place of Application for Permit to Drill Form 3160–3)

1. Oil Well, Gas Well, Other (Specify).
 2. Name, Address, and Telephone of Operator.
 3. Name and Telephone of Specific Contact Person.
 4. Surface Location of Well.
Attach:
 - (a) Sketch showing road entry onto pad, pad dimensions, and reserve pit.
 - (b) Topographical or other acceptable map showing location, access road, and lease boundaries.
 - 4a. A map (e.g., a USGS 7½" Quadrangle) of the area including the proposed well location and access road.
 5. Lease Number.
 6. If Indian, Allottee or Tribe Name.
 7. Unit Agreement Name.
 8. Well Name and Number.
 9. American Petroleum Institute Well Number (if available).
 10. Field Name or Wildcat.
 11. Section, Township, Range, Meridian; or Block and Survey; or Area.
 12. County, Parish, or Borough.
 13. State.
 14. Name and Depth of Formation
- Objective(s).
15. Estimated Well Depth.
 16. For directional or horizontal wells, anticipated bottom hole location, if known.
 17. Additional Information (as appropriate; include surface owner's name, address and, if known, telephone).
 18. Signed _____ Title _____ Date _____

Note: When the Bureau of Land Management or Forest Service, as appropriate, receives this Notice, the agency will schedule the date of the onsite inspection. You must stake the location and flag the access road before the onsite inspection. Operators should consider the following before the onsite inspection and incorporate these considerations into the Notice of Staking Option, as appropriate:

- (a) H₂S Potential.
- (b) Cultural Resources (Archeology).

(c) Federal Right-of-Way or Special Use Permit.

[FR Doc. 05–14103 Filed 7–26–05; 8:45 am]

BILLING CODE 3410–11–P; 4310–84–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 270

[Docket No. RM 2005–2]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Supplemental request for comments.

SUMMARY: The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board of the Library of Congress, is issuing a supplemental request for comments regarding rules for the delivery and format of records of use of sound recordings for statutory licenses under sections 112 and 114 of the Copyright Act.

DATES: Written comments should be received no later than August 26, 2005. Reply comments should be received no later than September 16, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of comments and reply comments must be brought to Room LM–401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and other similar overnight delivery services), an original and five copies of comments and reply comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments and reply comments must be addressed to: Copyright Royalty Board,

P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

Comments and reply comments 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.

FOR FURTHER INFORMATION CONTACT:

William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Overview

The Copyright Act, as amended by the Digital Millennium Copyright Act (Pub. L. 105–304, 112 Stat. 2860 (1998)), provides a statutory license for digital audio transmissions by certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services (17 U.S.C. 114(f)(4)(A)) and a related “ephemeral” statutory license for the temporary recordings used in those transmissions (17 U.S.C. 112(e)(4)). The statute directs the Librarian of Congress to “establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of use shall be kept and made available by entities performing sound recordings[]” by digital audio transmission. 17 U.S.C. 114(f)(4)(A); see, also 17 U.S.C. 112(e)(4). Avoidance of infringement liability is contingent upon “complying with such notice requirements * * *.” 17 U.S.C. 114(f)(4)(B)(i).

Through extensive prior proceedings, the Librarian has partially “establish[ed] requirements by which copyright owners may receive reasonable notice of the use of their sound recordings,” adopting interim regulations on the types of information that must be kept by digital audio services under 17 U.S.C. 114(f)(4)(A) and 112(e)(4). See, 69 FR 11515 (March 11, 2004). A notice of proposed rulemaking on the issues of delivery and formatting was published on April 27, 2005, by the Copyright Office. 70 FR 21704. Responsibility for the notice and recordkeeping regulations was transferred by Congress to the Copyright Royalty Judges (“CRJs”) by amended sections 114(f)(4)(A) and 112(e)(4) in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, 118 Stat. 2341 (November 30, 2004), which became effective on May 31, 2005. As anticipated in the April 27, 2005, notice of proposed rulemaking, the rulemaking record, including the comments received on the proposed

delivery and formatting rules, has been transferred to the Copyright Royalty Board ("the Board"), which was created by the Librarian to house the functions of the CRJs.

By this notice, the Copyright Royalty Board is seeking further comments on the rules proposed by the Copyright Office in the April 27, 2005, notice of proposed rulemaking ("NPRM"). These additional comments are sought in an effort to improve the quality of the Board's consideration of these important matters.

II. The Need for Supplemental Rulemaking Comments

This rulemaking task has proved nettlesome and frustrating. The written comments received from copyright owners¹ and licensees,² pursuant to the April 27, 2005, notice of proposed rulemaking, underscores the continued sharp divisions among the parties on the highly technical formatting and delivery issues. Resolution of these issues does not draw upon a reservoir of traditional agency expertise. The written comments seem frequently characterized by conclusory assertions and the issuance of a final rule on this record would be extremely difficult.

The Board's goal here is to obtain a fair and practical allocation of the burdens of data delivery for those who are unable to negotiate their own data delivery solutions with SoundExchange. The resulting system should not impose an unnecessary burden on copyright owners; at this time, the system cannot allow copyright owners to throw up burdens that would defeat or unnecessarily discourage use of the statutory licenses. The Board is earnestly asking for more specific, additional information that will reduce the speculative nature of its rulemaking decision to the degree possible. The information should be detailed enough to provide support for, and rebuttal to, assertions regarding the burdens imposed by the proposed rules or by the logical alternatives to those rules. Citations to supporting references should be provided wherever possible.

¹ SoundExchange, Inc. ("SoundExchange"), which has been designated as the Receiving Agent for royalties paid pursuant to the section 112 and 114 statutory licenses, has filed extensive comments in these rulemaking proceedings. The Board has also received comments of a limited nature from Royalty Logic, Inc. ("RLI").

² Comments reflecting the views of the digital audio service providers have been received from Collegiate Broadcasters, Inc. ("CBI"); Harvard Radio Broadcasting Company, Inc. ("WHRB"); the Intercollegiate Broadcasting System, Inc. ("IBS"); and the National Religious Broadcasters Music License Committee and Salem Communications Corp. ("NRBMLC/Salem").

Reports from expert consultants are encouraged.

In issuing this supplemental notice, the Board stresses that it has not made a decision on the merits of any of the formatting and delivery issues presented in this rulemaking proceeding and will consider any further comments on any matter interested persons might wish to offer. The Board is, however, urging commenters to zero in on the following specific technical issues.

III. Specific Factual Questions

A. Spreadsheets

SoundExchange has agreed to allow webcasters to use two commercially available spreadsheets in creating and formatting records of use for each sound recording used under sections 112 and 114 of the Copyright Act. SoundExchange has already posted on its Web site a template for Microsoft Excel and asserts that a version for Correl's Quattro Pro will soon be posted. It submits that "due to the significant limitations of spreadsheets, SoundExchange shall not be required to provide technical support for the use of spreadsheets for recordkeeping purposes." SoundExchange comments at Exhibit B at 3 (May 27, 2005). All spreadsheet data must be converted into an American Standard Code for Information Interchange ("ASCII") format prior to delivery to SoundExchange.

CBI and WHRB offer the following objections. CBI objects that SoundExchange will not provide technical assistance to services seeking to complete spreadsheets and that such a provision "absolves SoundExchange of any responsibility to provide a template and instructions that are free from errors, no matter how egregious." CBI comments at 8 (May 27, 2005). CBI and WHRB assert that converting spreadsheet data to ASCII is expensive, impractical, and "eliminates the only reasonable, financially accessible, and widely available tool." Id.; WHRB comments at 6 (May 27, 2005) ("The process of using a spreadsheet program to export an ASCII file is difficult and will be prone to errors, particularly in the hands of unpaid volunteers with relatively high rates of turnover.")

Questions:

1. How expensive and time-consuming would it be for a typical noncommercial webcaster on the Internet to compile spreadsheets using Microsoft Excel? Using Corel Quattro Pro?

2. What are the practical difficulties in converting a Microsoft Excel or Corel

Quattro Pro spreadsheet into ASCII? How costly is it?

3. What are the kinds of technical support that are typically needed in preparing Microsoft Excel and Corel Quattro Pro spreadsheets and converting them to ASCII? How would that technical support be available to a webcaster and what costs would be involved?

B. Commercially Available Software

Although the Copyright Office NPRM only addressed commercially available spreadsheets as a means of creating records of use, the Board is interested in knowing what, if any, software is commercially available that could be used to compile records of use.

Questions:

What, if any, commercially available software is available that could be used to compile records of use? Would such software produce records of use that are format compatible with SoundExchange's data processing system? What are the costs associated with such software?

C. Report Delivery

SoundExchange supports four methods of delivery for electronic data files: File Transfer Protocol ("FTP"); electronic mail attachment; CD-ROM delivery and; floppy diskette delivery. Each of these delivery methods has specific requirements (examples: e-mail attachments may not exceed ten megabytes; FTP delivery requires securing username and password; floppy diskettes must measure 3.5 inches in diameter). Webcasters do not object to the proposed delivery methods.

However, WHRB recommends that records of use should be accepted by SoundExchange via its Web site. Once logged in, services would have the ability to upload new reports to the SoundExchange site, "with SoundExchange automatically handling the naming and tagging of the reports." The Web site could also allow the webcasters to view their history of submitted reports. WHRB comments at 6-7 (May 27, 2005). SoundExchange has opposed allowing delivery of records of use to a Web site, citing unspecified cost and security concerns. See 70 FR 21704, 21707 (April 27, 2005).

Questions:

1. What are the average estimated costs of creating and maintaining a Web site for receipt of records of use? What are the security concerns and how may they be addressed? Is there a commercially available Web site software that could perform this task? Is Web site software available that could

be adopted from other SoundExchange uses?

2. To what extent can a SoundExchange-hosted Web site reduce costs associated with records of use? Can it assist in organizing and cataloging delivered data and, if so, in what fashion and to what extent?

3. Could a SoundExchange-hosted Web site be required to provide services with access to prior submitted records of use? For how long?

D. File Naming

Every record of use must be named and must contain the dates of the reporting period. SoundExchange insists that the “[s]tart and end 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).” SoundExchange comments, Exhibit B at 4 (May 27, 2005). NRBMLC/Salem urge that the reporting dates for data files should be in the format of YYYYMMDD, which they state is “the official format adopted by the ASCII standard.” NRBMLC/Salem comments at 1 (May 27, 2005); See, also NRBMLC/Salem comments at 5 (September 30, 2002) and NRBMLC/Salem reply comments at 8 (October 10, 2002).

In addition, NRBMLC/Salem submit that “we are concerned about radio stations that may not have the technological capability of assigning file names the length that SoundExchange’s proposal envisions.” Id.

Questions:

1. What is the ASCII standard for reporting days, months and years? Is one way more cumbersome or expensive than the other?

2. What is required to be technologically capable of assigning file names of the length proposed in the NPRM?

E. File Extension

SoundExchange requests that the service name, start and end date of the reporting period and the transmission category be followed by the file extension “.txt.” An example of a file identifier is as follows: ex. AcmeMusicCo15012005-21012005_H.txt. NRBMLC/Salem objects to the sole use of “.txt” as a file extension and asserts that “[t]here is no need for the Office to regulate at this level of detail, and alternate file type extensions should be allowed so long as the data contained in the file is in the appropriate format.” NRBMLC/Salem reply comments at 9 (October 10, 2002).

Questions:

1. What difficulties would it create for SoundExchange if reports without .txt file extensions and/or with different file extensions were submitted?

2. What difficulties would it create for digital audio services if they were required to use .txt file extensions on their reports?

F. Delivery Address

RLI requests that it receive all records of use. RLI comments at 1 (May 27, 2005).

Questions:

1. What standing does RLI have to request copies of the reports of use?

2. How expensive and burdensome would it be, on average, for services to provide RLI with records of use in addition to SoundExchange?

3. Must all the format requirements be the same?

G. Files With Headers

SoundExchange requests that the following header appear, in order, on each data file of a record of use:

Row No.	Field definition
1	Name of Service.
2	Name of Contact Person.
3	Street Address.
4	City, State, Zip, Country.
5	Phone.
6	E-mail.
7	Start of the Reporting Period.
8	End of the Reporting Period.
9	Report Generation Date.
10	Number of Rows.
11	Text Indicators.
12	Field Delimiters.
13	Blank Line.
14.	

SoundExchange comments Exhibit B at 8 (May 27, 2005).

NRBMLC/Salem object to SoundExchange’s requested format for a file with headers on multiple grounds. First, they assert that the contact information on the first six lines should not be required since preexisting subscription services are not required to report such information in a file with headers. See 37 CFR 270.2. Second they assert that there is no reason to require lines 7 and 8 because the information contained therein already appears in the file name. Third, they assert that line 9 is completely unnecessary because the report generation date has nothing to do with the distribution of royalties. And fourth, NRBMLC/Salem submit that row 10 is unnecessary because the information has nothing to do with a station’s music use.

NRBMLC/Salem comments Exhibit 2 at 7–8.

NRBMLC/Salem assert that files with headers should resemble the format

followed by the webcasters that generate playlists. They propose the following requirements for files with headers:

i. A file identifying the data fields conforming to the following specifications with accompanying header information:

1. The file may identify the sound recordings performed on a particular day or during a particular multiple-day reporting period.

2. The file must contain at least the fields required to be reported * * * but may contain additional fields. If the file contains data concerning sound recording transmissions spanning more than one day, the date of transmission of each sound recording shall also be specified in each data record.

3. The Service shall provide header information that identifies the required fields of information and the order in which they appear in the file. The header information shall include field identifiers from the following list:

- a. DATE, to identify the date on which a sound recording was performed;
- b. TITLE, to identify the title of the sound recording;
- c. ARTIST, to identify the featured performing artist;
- d. ALBUM, to identify the album from which the sound recording was played, if, in fact, the sound recording was played from an album and if that information is in the source file that was used to create the playlist;
- e. LABEL, to identify the record label that distributes the sound recording, if that information is in the source file that was used to create the playlist;
- f. LISTENER, to identify the estimated number of listeners who heard the particular sound recording performed; and
- g. IRREL, to identify irrelevant fields not required to be reported.

4. At the Service’s option, header information may be embedded in the file as the first line of data, or it may be provided to the Collective³ separately. The Service shall notify the Collective of the means of transmitting such header information.

5. At the Service’s option, information concerning the estimated number of listeners to particular sound recordings may be submitted in a separate file with accompanying header information including, without limitation, the DATE and LISTENER field identifiers set forth above * * *

6. Notwithstanding the above requirements, output files generated by

³The “Collective” in this instance is SoundExchange, and possibly Royalty Logic if its proposal for inclusion is adopted.

a Broadcaster's music scheduling or digital automation software shall be deemed to be in an acceptable format provided that they are accompanied by header information described above to identify the data fields contained therein.

NRBMLC/Salem reply comments Tab A at 2-4 (September 30, 2002) (footnote added).

Questions:

1. How are files with headers typically organized? Are there any generally recognized standards for music reporting? What are the software requirements and costs associated with creating data files with headers?

2. Given that preexisting subscription services are not required by Copyright Office regulations to report the data contained in the first six lines of SoundExchange's proposal, what are the costs/benefits to requiring this information in each data file?

3. Given that lines 7 and 8 of the header information contained in SoundExchange's proposal are already reported in the file name, what are the costs/benefits of requiring them to be repeated in each data file?

4. To what extent must the header information in SoundExchange's proposal be provided in the requested order? Is any variance possible? What are the costs/benefits associated with variances?

5. What are the problems, if any, associated with the NRBMLC/Salem proposal for files with headers? Do they present compatibility issues with the SoundExchange data processing system and, if so, what are those issues?

6. Can there be flexibility in the regulations for the creation of files with headers or must the regulations be rigid?

H. Field Delimiters and Text Indicators

SoundExchange proposes the field delimiter for a data string be a pipe ("|") and that the text indicator be a caret ("^") and that in no instance may a field delimiter or text indicator appear in a data string. SoundExchange comments Exhibit B at 8 (May 27, 2005). Harvard and NRBMLC/Salem propose the use of commas for field delimiters and quotes as text delimiters, arguing that these are the industry standards. NRBMLC/Salem comments at 1-2 (May 27, 2005).

Questions:

1. What are the industry standards for use of field delimiters and text delimiters? Should particular ones be specified in the regulations? To what extent is flexibility acceptable in their selection?

2. What problems will be created by allowing the use of commas and quotes

as field delimiters and text indicators, respectively? How can such problems, if any, be avoided?

I. Data Fields

SoundExchange requests that all data appearing in data fields be in upper case characters (ex. THE ROLLING STONES). SoundExchange comments Exhibit B at 11 (May 27, 2005). CBI submits that while the:

[U]se [of] all capital letters in the data fields might be convenient for SoundExchange, [it] is a substantial problem for stations in numerous ways. Stations that have existing databases would have to go back and change every record in their database, not an insignificant prospect. This would be a time consuming task that would also likely induce additional errors in the database. Stations that manually enter the data by hand at the time of use will likely encounter many unintentional cases of the data being entered improperly. Further, those that utilize this data for other uses will likely not want the data to be in all capital letters, which would require such stations to maintain two separate databases. CBI comments at 10 (May 27, 2005).

Questions:

1. What are the costs/benefits of requiring all data fields to be in upper case characters? Will the SoundExchange data processing system accept lower case characters in a data field and combinations thereof?

2. What is the industry standard for data fields?

J. Abbreviations

SoundExchange requests that there not be any abbreviations permitted in the data fields. SoundExchange comments Exhibit B at 11 (May 27, 2005). CBI, NRBMLC/Salem and WHRB object. CBI submits that disallowing abbreviations will increase the likelihood of data entry errors due to the voluntary nature of staff and/or the requirement would "cause a major expense and/or disruption" to their existing practices. CBI comments at 11 (May 27, 2005). NRBMLC/Salem states that "[t]he very concept that there is a "standard" manner of inputting title and artist information in light of the many ways in which stations receive music and the varying practices amongst broadcasters defies common sense." NRBMLC/Salem reply comments at 7 (October 10, 2002). WHRB argues that SoundExchange should be required to "compile and make publicly available a comprehensive, universal database to identify sound recordings."

WHRB comments at 8 (May 27, 2005).

Questions:

1. What problems, if any, does allowing abbreviations within data fields present to SoundExchange's data processing system? How can these be addressed?

2. Can a set of rules be developed that permit abbreviations within data fields and, if so, what should these rules be?

3. What are the burdens and costs associated with the creation and maintenance of a data-base of sound recording titles, album titles, artists' names, etc. by SoundExchange? What should be the functionality of such a database? How could such a database be utilized to reduce the overall costs of reporting records of use?

K. Files Without Headers

SoundExchange requests the following format requirements for data files without headers:

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

(2) Carets (^) should be used as the text indicator, surrounding alphanumeric data elements such as name of Service, transmission category, channel name, artist, song title, album;

(3) No carets (^) should surround dates and numbers;

(4) A carriage return must be at the end of each line; [and]

(5) All data for one record should be on a single line.

SoundExchange comments Exhibit B at 11 (May 27, 2005)(sixth format requirement omitted).

NRBMLC/Salem proposes different requirements for files without headers:

A file containing data records only, with no header information, and conforming to the following specifications.

1. The file may identify the sound recordings performed on a particular day or during a particular multiple-day reporting period.

2. The file must contain only the fields required to be reported * * *, in a particular order reasonably agreed upon by the Service and the Collective.

3. At the Service's option, information concerning the estimated number of listeners to particular sound recordings may be submitted in a separate file containing date and listener information in an order reasonably agreed upon by the Service and the Collective.

NRBMLC/Salem reply comments Tab A at 4 (September 30, 2002).

Questions:

1. Are there industry standards for compiling data files without headers and, if so, what are they? What are the

costs/benefits of compiling data files without headers versus those with headers?

2. How flexible can the format requirements be for files without headers? What are the options?

3. Can categories of data be submitted in separate files or must it all be submitted in a single file? What is the capability of SoundExchange's data processing system to handle more than one file of data per Service?

4. To what extent could it be permissible to allow automated services to report playlist data in native form to SoundExchange?

IV. Legal and Policy Questions

In addition to the specific technical questions presented above, interested persons are also encouraged to supply their views on the following questions of a more general nature.

Questions:

1. Did Congress, in 17 U.S.C. 114(f)(4)(A) and 112(e)(4), require the Copyright Royalty Judges to prescribe particular formatting and delivery requirements at the level of detail described in the April 27, 2005, notice of proposed rulemaking? Is there some relevant set of Internet conventions or practices that could guide the Board in setting data submission standards here?

2. Could a system of webcast sampling, analogous to the sampling performed by performing rights societies in the context of broadcasting, meet the record-of-use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4)?

3. Under the provisions of any final rule adopted to implement the notice and record of use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4), either copyright owners (in the form of their agent, SoundExchange) or licensees will be burdened with having to change their existing data systems. From a legal and a policy perspective, on whom is it most appropriate to place these burdens? Is the court's discussion in *Amusement and Music Operators Association v. Copyright Royalty Tribunal*, 676 F.2d 1144, 1154-55 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982) ("depriv[ing] copyright owners of increased remuneration for the exploitation of their works by showing that some * * * operations will become unprofitable is * * * unsound and unjust") pertinent to this inquiry?

V. Encouragement of Settlement

As the Copyright Office has repeatedly stated, it would be far preferable for the parties to reach their own agreement on these formatting and delivery issues. Government regulation, especially at this level of detail, is an

undesirable substitute for industry agreement. The parties who will be affected by the format and delivery regulations should confer and advise the Board if some or all of them can jointly propose solutions with respect to any of the issues raised in these proceedings.

Dated: July 21, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05-14872 Filed 7-26-05; 8:45 am]

BILLING CODE 1410-72-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2005-0160; FRL-7723-5]

Cyhexatin; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), all existing tolerances for residues of the insecticide/acaricide cyhexatin because they do not meet requirements of FFDCA section 408(b)(2). EPA canceled food use registrations for cyhexatin in 1989. Currently, EPA determined that acute dietary risks from use of cyhexatin on commodities for which import tolerances exist exceed the Agency's level of concern. However, EPA also determined that if the only cyhexatin tolerance is for orange juice, there is a reasonable certainty that no harm to any population subgroup will result from exposure to cyhexatin treated oranges. Because manufacturers support a cyhexatin tolerance on orange juice for purposes of importation and the Agency has made a determination of safety for such a tolerance, EPA is also proposing that, concurrent with the revocation of the citrus fruit group tolerance, an individual time-limited tolerance be established for orange juice. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 41 tolerances which would be counted as tolerance

reassessments toward the August 2006 review deadline.

DATES: Comments must be received on or before August 26, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP-2005-0160, by one of the following methods:

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

- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0160.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0160.

- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0160. 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 docket ID number OPP-2005-0160. 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.epa.gov/edocket/>, 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 EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are "anonymous access" systems, 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 EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is