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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule under Commandant Instruction M16475.1C, 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 categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2–1, paragraph 35(h) of the Instruction, from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, navigation (water), Reporting and recordkeeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; and Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.903 to read as follows:

§ 100.903 Head of the Cuyahoga Regatta, Cleveland, OH.

(a) Regulated Area. All portions of the Cuyahoga River between a line drawn perpendicular to each riverbank at 41°29′19″ N, 81°40′50″ W (Marathon Bend), to a line drawn perpendicular to each riverbank at 41°29′56″ N, 81°42′27″ W (confluence with the Old River). These coordinates are based upon North American Datum (NAD 1983).

(b) Enforcement Period. This section will be enforced annually on the third Saturday of September from 8 a.m. until 3 p.m. The Coast Guard will publish the dates annually.

(c) Special Local Regulations. All vessels are prohibited from transiting the area without permission from Coast Guard Patrol Commander via VHF/FM Radio, Channel 16, to transit the area.

Dated: February 23, 2004.

Lorne W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 04–5466 Filed 3–10–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–6A]

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations governing the content and service of certain notices on the copyright owner of a musical work. The notice is served or filed by a person who intends to use a musical work to make and distribute phonorecords, including by means of digital phonorecord deliveries, under a compulsory license.

DATES: Comments should be received no later than April 12, 2004.

ADDRESSES: An original and ten copies of any comment shall be sent to the Copyright Office. If comments are mailed, the address is: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0400. If comments are hand delivered by a commercial, non-government courier or messenger, comments must be delivered to: The Congressional Courier Acceptance Site, located at Second and D Streets, NE., between 8:30 a.m. and 4 p.m., and addressed to ''Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000.'' If comments are hand delivered by a private party, they must be addressed to: ''Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000,'' and delivered to the Public Information Office, James Madison Memorial Building, Room 401, First and Independence Avenue, SE., Washington, DC between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 of the Copyright Act, 17 U.S.C., provides that ''[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person * * * may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work.'' 17 U.S.C. 115(a)(1). The compulsory license set forth in section 115 permits the use of a nondramatic musical work without the consent of the copyright owner if certain conditions are met and royalties are paid.

One such condition precedent set forth in the law requires any person using the section 115 license to provide notice to the copyright owner of a musical work ''before or within thirty days after making, and before distributing any phonorecords' of his or her intent to use the copyright owner's work under the statutory license. 17 U.S.C. 115(b). Pursuant to this section, the Register of Copyrights issued regulations prescribing the form, content, and manner of service of the Notice of Intention (''Notice'') to obtain the license. Final regulations governing the content and service of the Notice were adopted on November 28, 1980. 45 FR 79038 (November 28, 1980). These rules served the traditional needs of the statutory licensee who wished to use a copyrighted musical work to make their own sound recording under the traditional section 115 mechanical license.

Section 115 was subsequently amended on November 1, 1995, with the enactment of the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39 (1995). Among other things, this law expanded the section 115 compulsory license for making and distributing phonorecords to include not only the traditional use of the musical work to make an original sound recording, but also the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery (''DPD''). *See* 17 U.S.C. 115(c)(3)(A). As defined

in the law, a digital phonorecord delivery is:

> each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein.

17 U.S.C. 115(d).

The right to make and distribute a DPD, however, does not include the exclusive rights to make and distribute the sound recording itself. These rights are held by the copyright owner of the sound recording and must be cleared through a separate transaction. In fact, to avoid any confusion on this point, the Digital Millennium Copyright Act of 1998 (''DMCA''), Public Law 105–304, clarifies that the making of a DPD will constitute an act of infringement under section 501 unless: (1) The copyright owner of the sound recording authorizes the making of the DPD, and (2) the owner of the copyright of the sound recording or the entity making the DPD has obtained a compulsory license under section 115 or has otherwise been authorized to distribute, by means of a DPD, each musical work embodied in the sound recording. *See* 17 U.S.C. 115(c)(3)(H).

What the DMCA did not do is change or alter the longstanding notice requirement set forth in section 115(b). However, the amendments did require the Copyright Office to amend its regulations governing the content and service of the required Notices of Intention to use the license to include the making of a digital phonorecord delivery, and the Office did so in 1999. *See* 64 FR 41286 (July 30, 1999). Unfortunately, these changes did not go far enough to address the needs of certain digital music services which anticipate using most, if not all, of the musical works embodied in the sound recordings readily available in today's marketplace under the section 115 license.

Consequently, on August 28, 2001, the Copyright Office published a second notice of proposed rulemaking in which it suggested further amendments to those rules associated with service of a Notice to use the section 115 license and filing of such notice with the Office. 66 FR 45241 (August 28, 2001). The purpose of these amendments is to streamline the notification process and make it easier for the licensee to serve the copyright owner with notice of the potential user's intention to use multiple musical works.

II. Comments

In response to this notice, the Copyright Office received comments from Wixen Music Publishing, Inc. (''Wixen''), the Digital Media Association (''DiMA''), Napster, Inc. (''Napster''),[1] and a joint comment from the Recording Industry Association of America, Inc., the National Music Publishers' Association, Inc., and The Harry Fox Agency, Inc. (collectively, ''RIAA/NMPA/HFA'').

Wixen filed general comments which oppose the proposed amendments. It argues that the changes are designed to make it easier to use the statutory license and that increased use of the license is not a desirable result because use of the license erodes the rights of copyright owners. Wixen, however, fails to offer any support for its position or its observation, other than to assert that record clubs fail to adhere to the mechanical licensing process altogether. But failure on the part of some persons to use the license properly is not a reason to erect barriers for others to take advantage of the statutory license. In fact, the Office has a responsibility to promulgate regulations that implement Congress' express intent to allow the use of a musical work for the purpose of making and distributing phonorecords under the terms of the statutory license.

The remaining three commenters, DiMA, Napster and RIAA/NMPA/HFA, all agree that the current regulations do not meet the needs of the new technologies and are in need of revision. In fact, these commenters do not think the proposed changes go far enough, and they encourage the Office to adopt further revisions to streamline and simplify the notice provisions. In addition to the revisions proposed in the initial notice, RIAA/NMPA/HFA propose regulatory language that addresses electronic licensing, eliminates the requirement that certain ownership, officer and director information be provided, and allows service of Notices by regular mail or courier.

DiMA agrees with RIAA/NMPA/HFA in large part but maintains that the current system, even with the proposed changes, does not address the needs of the newly emerging business models. Both it and Napster support electronic filing, but their comments go much further than the changes proposed by the Office or RIAA/NMPA/HFA, in that they urge the Office, to the extent possible, to incorporate the changes set forth in the proposed Music Online Competition Act of 2001 (''MOCA''), proposed in the 107th Congress as H.R. 2724. Specifically, DiMA and Napster would like the Copyright Office to designate a single entity upon which to serve Notices and make royalty payments. In addition, DiMA proposes the creation of a ''safe harbor'' for those who fail to exercise properly the license during the period of uncertainty arising from the administration of the license for digital phonorecord deliveries (''DPDs''). It would also like to see the regulations amended to allow payment on a quarterly rather than a monthly basis and to establish a threshold below which payment would not be required.

These suggestions, however, require statutory changes. For example, the Office has no authority to excuse a licensee's failure to serve a Notice within the statutory time frame, nor does it have the authority to alter the timetable for payment. Section 115(b) of the Copyright Act states that a licensee ''shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner.'' Likewise, section 115(c)(5) specifically requires that ''royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding.'' Moreover, section 115(c)(6) makes clear that upon failure to make payment within thirty days from the date of receipt of a written notice from the copyright owner indicating that payment has not been received, the license will be terminated and further making or distributions pursuant to the license are actionable as acts of infringement. 17 U.S.C. 115 (c)(6).

Notwithstanding the requests to issue rules to modify the law, the Office has found the comments useful and has incorporated many of the commenters' proposals in the rules proposed herein, especially where the proposed changes would facilitate the process for filing Notices to the benefit of both the licensee and the copyright owner.

The proposed rules published today reflect the Office's proposed resolution of the issues raised in this rulemaking proceeding and of the proposals made by the commenters. Because the Office proposes to address one issue raised by commenters but not raised in the earlier notice of proposed rulemaking, and because the Office seeks further comment on one issue addressed below, we are publishing a final notice of proposed rulemaking to seek comments on those two particular issues. Commenters may, of course, address other provisions of the proposed rules as well, but the Office does not

[1] Napster, Inc. subsequently went out of business. The Napster service mark is now used by Roxio, Inc. in connection with an online music service.

anticipate that its determinations on those provisions will change. It is the Office's goal to propound final regulations promptly after the expiration of the comment period.

III. Discussion

1. *Service on Authorized Agents.* Under the proposed amendments, a potential licensee could choose to serve either the copyright owner of the musical work or a duly authorized agent of the copyright owner for purposes of complying with the notice requirements of the section 115 license. In principle, RIAA/NMPA/HFA support such a change, but they contend that the proposed amendment is too restrictive. First, they object to the requirement that the agent must be specifically authorized to grant or administer the particular rights that are being licensed. They note that a compulsory license is conferred automatically, by operation of law, and consequently, a ''copyright owner * * * should have the flexibility to appoint agents that are authorized to receive Notices of Intention and transmit them to the copyright owner, even if such agents are not empowered with discretion to grant or administer rights on a voluntary basis,'' RIAA/NMPA/HFA comment at 5, and propose additional language to cover this contingency.

Second, they contend that a licensee should not be penalized for not knowing the metes and bounds of the agent's authority. To deal with such a case, RIAA/NMPA/HFA seek a change in the proposed regulatory language that would protect the licensee in the event an agent who has no authority to receive the Notice is mistakenly served on behalf of the copyright owner. Specifically, their proposed rule would allow the agent to return the Notice to the licensee who would then serve the Notice on the copyright owner directly within thirty days after receiving the returned original Notice. The rule would further specify the date of the mailing of the original Notice as the date of service for purposes of the section 115 license.

Third, RIAA/NMPA/HFA express concern that the emphasis on an agent being ''duly authorized'' may set a standard for establishing an agency relationship higher than that applied as a matter of agency law.

The need for a more flexible system for notification of use of the section 115 statutory license is evident from the comments received by the Copyright Office. Consequently, the rules proposed today will provide greater flexibility to the copyright owner and to the licensee. They will allow a copyright owner to use an agent to accept the requisite Notices and/or royalty payments accompanied by statements of account, but the rules will not require that the copyright owner use a single agent to perform both functions. The decision to use an agent is left to the discretion of the copyright owner who may wish to use one agent to accept all filings under the section 115 license, including the Notice, the Statements of Account and royalty payments. Alternatively, a copyright owner may choose to use an agent only for the purpose of accepting Notices with the expectation that the licensee will thereafter send all statements of account and royalty payments directly to the copyright owner or to another agent designated by the copyright owner for that purpose.

However, use of multiple agents can create traps for the unwary licensee in the case where an agent has been authorized only to accept Notices and the licensee is unaware of the limits of the agent's authority or assumes incorrectly that, as under the former regulatory scheme, Notices and Statements of Account are served on the same entity. Consequently, the new rules would impose a duty on the copyright owner to have its agent disclose the extent of its authority and to provide each licensee with the information they need to make payment to the proper party and to file the Statements of Account. This approach would allocate to the licensee the responsibility for serving Notices on the proper party, *see* discussion *infra,* section 4, *Risk Assessment,* and would place responsibility for supplying information for making proper payment on the copyright owner, who is in the best position to provide this information. Licensees who make payment in accordance with the information provided by an authorized agent would be deemed to have fully complied with the statutory requirements. A licensee who has served the Notice of Intention upon an agent will be under no obligation to send Statements of Account or royalty payments to the agent or the copyright owner until the agent notifies the licensee where to send the Statements of Account and payments. However, once the agent sends such notification, the licensee would be required to send Statements of Account and royalty payments covering the intervening period.

Such an approach creates the risk that a licensee may be able temporarily to delay sending Statements of Account and royalty payments to a copyright owner when the agent has failed to advise the licensee where to send them, but this appears to be a necessary result of the system proposed by copyright owners that would permit them to limit the authority of the agent to receipt of Notices of Intention. The Office also seeks comment on an alternative approach that would require the licensee to send Statements of Account and royalty payments to the agent to whom the Notice of Intention was sent unless and until the agent or the copyright owner advises the licensee that the statements and payments should be sent elsewhere.

In adopting the new approach, the Office also considered carefully the rule proposed by RIAA/NMPA/HFA that would protect a licensee in the event the Notice is incorrectly served on an agent with no authority to act on behalf of the copyright owner for purposes of the compulsory license. Under the proposed RIAA/NMPA/HFA rule, a licensee would incur no liability for a misdirected Notice provided that the licensee served the Notice properly on the copyright owner within thirty days after receiving the returned Notice. Moreover, the proposed rule would have specified the date of the mailing of the original Notice as the date of service for purposes of providing notice to the copyright owner.

The rule change proposed by RIAA/NMPA/HFA, however, would be contrary to law in at least two ways. First, the proposed rule would not insure notice in all situations. It would only require a licensee to serve a Notice directly on the copyright owner in the case where a misdirected Notice has been returned to the licensee. It would not provide for any means to notify the copyright owner in the case where a Notice has been misdirected and not returned, thus, failing to meet the notice requirement.

Second, the proposed rule would extend the period for serving a Notice beyond the period set forth in the law. The statute requires that notice be served on the copyright owner ''before or within thirty days after making, and before distributing any phonorecords of the work,'' 17 U.S.C. 115(b)(1). Yet, the RIAA/NMPA/HFA rule would expand the period for serving a Notice on the copyright owner, by resetting the clock for the thirty-day period for serving the Notice on the copyright owner to the date a misdirected Notice is returned to the licensee. RIAA/NMPA/HFA realize that this proposal could contravene the statutory time frame for serving notice and attempt to solve the problem by having the Office adopt a new rule, specifying the mailing date of the original Notice as the date of service.

But this approach is flawed because it ignores the fact that the law requires that a person wishing to use the compulsory license ''serve notice of intention to do so on the copyright owner.'' 17 U.S.C. 115(b)(1). Service on someone other than the copyright owner or the owner's authorized agent, even when done in good faith, is not service on the copyright owner. For the foregoing reasons, the RIAA/NMPA/HFA proposed rule has not been adopted.

We have also considered RIAA/NMPA/HFA's suggestion to eliminate the requirement that an agent be ''duly authorized'' to act on behalf of the copyright owner for the purpose of administering the reproduction and distribution rights of the copyright owner and agree that it is not necessary for an agent to be authorized to this extent, if the agent will only be accepting Notices to use the section 115 license, *see* 37 CFR 201.18(a)(4), and/or accepting Statements of Account and royalty payments, *see* 37 CFR 201.19(a)(4) and (e)(7)(i). However, the agent must have the authority to accept the Notices and/or Statements of Account and royalty payments. RIAA/NMPA/HFA also express concern that the requirement that the agent be ''duly authorized'' might be interpreted as setting a standard of authority different from that which would apply as a matter of agency law. They propose that persons wishing to use the statutory license be permitted to serve Notices of Intention on agents ''with authority'' to receive the Notice of Intention. The Office agrees that service upon an agent who has authority to accept Notices of Intention on behalf of a copyright owner should be sufficient. For this reason, the rules will require that service be made on the copyright owner or on an agent with authority to receive the Notice, but will not include the original proposed requirement that the agent be fully authorized to administer the reproduction and distribution rights.

Napster and DiMA, like RIAA/NMPA/HFA, support the adoption of a rule that would allow service on an agent, but they offer a different approach to the problem. They propose that service be made upon a single agent to be designated by the Office in a procedure similar to that used to designate SoundExchange as the receiving agent for all royalty fees for the performance of sound recordings under the statutory section 114 license. *See* 63 FR 25394 (May 8, 1998); 67 FR 45239 (July 8, 2002).

We recognize the potential benefit that such a rule would have for licensees, but we find no authority in the statute to promulgate such a rule. In fact, Napster's and DiMA's suggestion that the Copyright Office designate a single agent for purposes of receiving the Notices is contrary to the express language in the law. Section 115(b)(1) requires that a licensee serve a Notice to use the compulsory section 115 on the copyright owner and allows filing of the Notice with the Office only in the event the ''registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served.'' Thus, there can be no serious dispute that the law allows service of the Notice with the Copyright Office only in very limited circumstances. Notice to either the Copyright Office or a single agent designated by the Copyright Office would alter the structure set forth in the law and, hence, it is clearly not permissible. Moreover, while the advantage of such an approach to licensees is apparent, copyright owners presumably would consider themselves disadvantaged by such an approach because they would no longer receive direct notification that their works are being used by particular licensees. However, there is no reason that a copyright owner cannot affirmatively designate an agent to act on his or her behalf for purposes of receiving the Notices and the monthly statements of account, and so the proposed rules have been amended accordingly.

RIAA/NMPA/HFA also suggest a technical correction to make clear that service may be accomplished by either serving the copyright owner directly or an agent of the copyright owner. We agree that the final rules should be clear that service on either the copyright owner or its agent is sufficient, and we have revised the proposed amendment accordingly.

2. *Service by Regular Mail or Courier.* RIAA/NMPA/HFA suggest that the Office amend its rules to allow service by means other than certified mail or registered mail, including first class mail, airmail, express mail, or by reputable courier. They maintain that service by certified mail or registered mail is both needlessly expensive and time consuming. They also note that service by regular mail is an accepted practice in other legal contexts and that service by a reputable courier, *e.g.*, Federal Express, DHL and UPS, is a widely accepted practice in the commercial business community.

The Office agrees with the proposed suggestion and proposes to amend its regulations to allow the licensee to choose the method of service. The advantage to using certified or registered mail, of course, is the creation of an evidentiary record to document the licensee's attempt to serve the Notice on the copyright owner in a timely manner. However, there is no reason to compel a licensee to use a particular method provided that the licensee assumes the burden of proving that the Notice was served in a timely manner. As before, where the licensee elects to serve the Notice by certified or registered mail on the copyright owner at the last address for the copyright owner shown in the records of the Copyright Office, the date the original Notice was sent, as documented by either a certified or registered mail receipt, shall be considered the date of service. Moreover, the Office will accept the date of attempted delivery by a reputable courier as the date of service, provided that documentation from the courier identifying the date of attempted delivery is provided. Alternatively, in the case where the licensee chooses to serve the Notice by means other than certified or registered mail or a reputable courier, *e.g.*, first-class mail, the licensee should have the burden of demonstrating that service was timely. This change would not alter in any way the licensee's obligation to serve the Notice on the copyright owner or the copyright owner's agent in the prescribed manner.

3. *Service to Known Address.* Section 115(b)(1) of the Copyright Act requires the compulsory licensee to serve the required Notice on the copyright owner. Under the current regulations, the Notice must be sent to the copyright owner identified in the registration records or other public records of the Copyright Office at the last address listed in these records in order to meet the notice requirements. Users have argued and the Office agrees that service on the copyright owner at the address listed in the Copyright Office records places a tremendous burden on a potential licensee who hopes to use the license to reproduce multiple works in those cases where the public records do not reflect the most current information and the licensee knows the current address for the copyright owner or the agent for the copyright owner who handles the reproduction and distribution rights. A licensee may have such information based upon a course of dealing with the copyright owner or because the copyright owner has publicized the information.

For that reason, the Office proposed an amendment to its regulations that would give the potential licensee an option to serve the copyright owner or his or her agent at a current address instead of requiring that the Notice be served on the copyright owner at the

address listed for that copyright owner in the public records of the Copyright Office. RIAA/NMPA/HFA support this change, recognizing that many copyright owners and licensees have an ongoing business relationship and knowledge of current information not reflected in the public records of the Copyright Office. They offer no proposed changes to this provision.

DiMA, on the other hand, proposes a more centralized approach whereby the user sends the Notices to a limited number of centralized entities such as the Copyright Office, or an agent or agents designated by the Copyright Office, instead of the copyright owner or his designated agent. DiMA comment at 4. This approach would, as DiMA points out, reduce expense and eliminate the problems that arise when a copyright owner refuses to accept certified mail filings.

However, as explained earlier, the only time it is appropriate for a licensee to file a Notice with the Copyright Office is when ''the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served.'' 17 U.S.C. 115(b)(1). Since the statute clearly sets forth the conditions under which a licensee can file its Notice with the Office, the proposed changes offered by DiMA to allow all Notices to come to the Copyright Office cannot be adopted. Such a rule would be an impermissible expansion of the duties and responsibilities delegated to the Copyright Office under the law. Therefore, the Copyright Office proposes to adopt a less expansive rule than the one proposed by DiMA which would allow a licensee to serve the copyright owner or his or her agent at an address other than the one listed in the Copyright Office records. If the licensee believes that he or she has more current or accurate information than the information in the Copyright Office records, he or she may serve the Notice using that information. However, as discussed below, the licensee bears the risk if his or her information proves to be inaccurate.

4. *Risk Assessment.* In the event the person or entity seeking to obtain the license chooses not to serve the copyright owner at the address for the copyright owner noted in the public records in the Copyright Office and mistakenly sends the Notice to a person or entity who is not the actual copyright owner, or the agent with authority to accept the Notice, or to an incorrect address, the licensee bears all risk associated with the misdirected service, including the likelihood that the compulsory license will not cover any activity taken by the licensee under a mistaken assumption that the Notice was properly served.

DiMA finds this approach too harsh and suggests that mistakes by a licensee's agent should not be imputed to the principal. It prefers a rule that would not bar a licensee from obtaining a statutory license for future use of the works in the case where the licensee reasonably relied on the integrity of the agent to effectuate proper notice. While the problem outlined is a serious concern, the Copyright Office has no authority to limit liability in the case where a Notice is improperly served. *See* 63 FR 25394 (May 8, 1998) (rejecting proposed term in rate setting proceeding that would have limited liability of a statutory licensee to acts which materially breach the statutory license terms).

5. *Service of Notice by Electronic Means.* RIAA/NMPA/HFA, DiMA and Napster requested that the Office amend its rules to permit a licensee to serve a Notice electronically. RIAA/NMPA/HFA note that service of a Notice in a digital format will reduce the potential for loss of information, prove less burdensome for both the licensee and the copyright owner (at least in those cases where the licensee is filing a Notice for use of multiple works), and provide a convenient and easy way to manage the data. To this end, RIAA/NMPA/HFA propose that the rules be amended to require service by electronic means when the Notice lists titles of more than 50 works and that any licensee be allowed to do so in these circumstances.

The Copyright Office fully supports the concept of service by electronic means and is cognizant of the many advantages it would provide to both licensees and copyright owners. Therefore, it is proposed that the rules be amended to provide an option for serving a Notice in a digital format. If a copyright owner/agent can accommodate a licensee who wishes to submit the Notice in a digital format and chooses to receive the Notice in this manner, then the Notice may be so served. Therefore, the Office proposes to adopt the RIAA/NMPA/HFA proposal to allow a licensee to submit a Notice to a copyright owner or its agent by means of an electronic transmission when the copyright owner or agent has determined that it can accommodate such submissions. The proposed rules would allow each copyright owner or agent acting on behalf of a copyright owner to establish written guidelines for making electronic submissions. All guidelines for making electronic submissions must be in writing and available to the public. An electronic submission made in this manner would be deemed to comply fully with the regulations for providing adequate notice to the copyright owner.

However, the Office recognizes that in some cases, an option to serve Notices electronically may be insufficient, and copyright owners may have good reason to insist upon electronic filing. As RIAA/NMPA/HFA assert, a Notice of Intention that lists a large number of works may be difficult to process and handle if it is submitted only in hard copy, especially if it is served on an agent for a number of copyright owners and lists the works of a number of copyright owners. For that reason, the Office proposes a solution somewhat different than, but modeled upon, the RIAA/NMPA/HFA suggestion to require an electronic filing in every instance where the licensee intends to file a Notice to license 50 works or more. Rather than require an electronic submission in every such case, the proposed rule would give a copyright owner or agent who receives a Notice of Intention that designates more than 50 works the right to demand that the person submitting the notice resubmit a list of the works identified in the notice in an electronic format. A list of the designated works would then have to be resubmitted in electronic format within 30 days of the licensee's receipt of the demand. As RIAA/NMPA/HFA proposed, the notice could be in any electronic format in wide use, giving licensees wide flexibility whether to use, for example, a particular word processing or spreadsheet program to prepare the notice.

The Office has also considered whether to allow a licensee to file a Notice in the Copyright Office in an electronic format. At this time, the Copyright Office is not prepared to accept electronic filings because it does not have in place the systems that would accommodate such filings. It is anticipated that such filings will be accepted in the future. For the time being, however, in the case where the licensee intends to license a high volume of musical works under section 115 and would endure significant hardships if required to submit the Notices under the standard practices, the licensee may contact the Licensing Division of the Copyright Office to inquire whether special arrangements can be made for submission of the Notice electronically.

6. *Multiple Works.* Another way to increase the efficiencies associated with the filing of a Notice is to allow the listing of multiple works on a single

Notice in the case where the works are owned by the same copyright owner. For this reason, the Office proposed to amend its rules to eliminate the requirement that a separate Notice be served or filed for each nondramatic musical work embodied, or intended to be embodied, in phonorecords made under the compulsory license. *See* 37 CFR 201.18(a)(2).

RIAA/NMPA/HFA support the Office's proposal to allow the listing of multiple works on a single Notice in the case where a single copyright owner has an interest in each of the listed works. DiMA also supports the Office's proposal to allow a licensee to list multiple works on a single Notice, but then suggests that, in the case of an electronic submission, the Office allow a licensee ''to file a single database notice including multiple works by multiple owners.'' DiMA Comment at 5. DiMA postulates that a single database Notice would make it demonstrably easier to manage the information. RIAA/NMPA/HFA agree with DiMA on this point.

The Office recognizes the efficiencies for the licensee associated with DiMA's suggestion but it has chosen not to adopt this approach as a general rule at this time. Instead, the proposed rule requires that a Notice list only the works of the copyright owner being served but, in the case of a Notice served on an agent, the Notice may list the works of multiple copyright owners as long as all the works listed on the Notice are owned or co-owned by copyright owners who have authorized the agent to accept Notices on their behalf. The Office is taking this approach because section 115, which requires service of a Notice on the copyright owner, does not anticipate that the copyright owner should have to search a licensee's universal database Notice to determine which of the copyright owner's works a licensee intends to use pursuant to the compulsory license.

However, in the case where the copyright owner or agent has the ability to sort the information and is willing to accept a database Notice submitted electronically, the Office sees no reason to prohibit the use of such Notice and require in its place the more particularized Notice outlined in the proposed regulations. Thus, the proposed rule leaves it to the discretion of the licensee and the copyright owner (or agent) to determine whether a database Notice listing multiple works by multiple owners is acceptable to both the licensee and the copyright owner/agent. In such situations, the licensee and the copyright owner/agent should work out the details associated with formatting and transmittal of the information.

The proposed amended regulations also would require that in the case where a licensee files a Notice listing multiple titles with the Copyright Office, the licensee shall pay the $12 filing fee for each title. The filing fee will cover the administrative costs associated with separately processing the information for each title in the Notice. There was no opposition to this provision.

7. *Content.* The current regulations do not require that the licensee list the copyright owner's name on the Notice because a separate Notice for each work was served directly on the copyright owner, who has no need to be informed of his or her identity. Under the proposed amended rules, though, this would no longer be the case. A Notice listing multiple works could be served on an agent working on behalf of multiple copyright owners. Under these circumstances, the Notice would have to identify the copyright owner of each work, and so an amendment was proposed to add this information to the Notice.

In response to this proposed change, RIAA/NMPA/HFA assert that the need to identify the copyright owner arises only when the Notice is not served directly on the copyright owner and suggest that the requirement apply only to Notices not served on a copyright owner directly. In theory we agree, and recognize that it may be redundant to include the name of the copyright owner on the Notice in those instances where the Notice is served directly on the copyright owner. Nevertheless, we recognize that all such Notices do not reach their intended destination. In these cases, the Notices may end up being filed with the Copyright Office and would have to include the name of the copyright owner. Such Notices should be complete on their face and not require any further work on the part of the staff or the public to identify the copyright owner. Moreover, requiring that the Notice contain the name of the copyright owner will eliminate the need to create multiple notice formats for service on different entities. Consequently, the proposed rules require the identification of the copyright owner on all Notices.

The Office also proposed adding a requirement that, in the case where a person files the Notice with the Copyright Office pursuant to § 201.18(e)(1),[2] the Notice include an affirmative statement that the registration records or other public records of the Copyright Office have been searched and that the name and address of the copyright owner is not listed in these records.[3] The purpose of this amendment is to provide sufficient information to the Copyright Office so that it can ascertain whether the Notice has been properly filed. Moreover, this requirement will serve as a reminder to the potential licensee that he or she has an obligation to search the public records of the Copyright Office before filing the required Notice with this Office. Napster, however, expressed a concern that the additional requirement may be used against a licensee as a means to oppose or restrict access to the compulsory license. We understand this concern, but the rules allow a licensee to file a Notice with the Office only when the registration records or other public records of the Copyright Office do not identify the copyright owner of the work and include an address, or when the Notice is returned to the sender because the copyright owner is no longer located at that address or refused to accept delivery. Consequently, the Office does not find a requirement to affirmatively state that the licensee has completed the obligatory search to be an onerous one and proposes to require the licensee to affirmatively state that the Office records have been searched and that the records do not include the name and address of the copyright owner.

In addition, RIAA/NMPA/HFA has asked the Office to ''eliminate the requirement that a licensee provide certain information concerning its ownership, officers and directors, and substitute greatly simplified requirements that the licensee (1) provides the name and title of the licensee's CEO, managing partner or the like and (2) identify the entity expected to be actively engaged in the business of making and distributing, or authorizing the making and distribution of, phonorecords if the licensee is a holding company, trust or other passive entity not actively engaged in such business.'' While the current requirements presumably are intended to benefit copyright owners, *see* 37 CFR 201.18(c)(1)(iii) and 201.19(f)(3)(iii), the fact that NMPA and HFA propose that it be eliminated suggests that copyright owners would not be harmed by removing it. In fact, RIAA/NMPA/HFA

[2] This rule has been redesignated as § 201.18(f)(1) under the proposed rules announced in this document.

[3] Newly designated § 201.18(f)(1) provides that if the registration records or other public records of the Copyright Office do not identify the name and address of the copyright owner of a particular work, a Notice of Intention with respect to that work may be filed with the Copyright Office.

maintain that the current regulations are not tailored to provide meaningful information to the copyright owners and may well impose a needless burden on licensees. In light of these assertions by both copyright owners and users, the Office proposes to remove these requirements from the rules; but because the proposal was not included in the initial Notice of Proposed Rulemaking, the Office is seeking public comment on these issues for consideration in preparing the final rule.

8. *Signature.* The Office proposes to further amend its rule to allow a duly authorized agent of the intended licensee to sign the Notice. An agent who signs on behalf of the licensee would have to be specifically authorized to execute the Notice on behalf of the licensee. A concise statement of authorization to that effect would have to be included in the Notice.

RIAA/NMPA/HFA raise concerns that the proposed regulatory language may ''require specific resolution of a licensee's board of directors or a certificate evidencing the agent's authority,'' and has suggested alternative language to make clear that such procedures are not required. Specifically, they have asked the Office to remove the regulatory language that requires the agent to be specifically authorized to execute the Notice and a concise statement of authorization to that effect and in its place require that the Notice include only an affirmative statement that the agent is authorized to execute the Notice on behalf of the licensee. Since the purpose of the rule is to insure that the person signing the Notice is either the licensee or a duly authorized agent and the proposed changes accomplish this goal without using language that would impose unintended requirements on a licensee or its board of directors, the Office proposes to amend its regulation to incorporate the proposed changes offered by RIAA/NMPA/HFA.

The Copyright Office also intends to amend its regulations regarding signature to address the issues and problems associated with making service electronically. Currently, there are no regulations pertaining to electronic service, but as explained earlier, the Office has considered the comments offered on this issue and proposes to adopt regulations that provide an option for electronic service. Since this option is voluntary and the Office has not requested comment on this issue—nor has any party who advocates and supports electronic service offered any suggestions as to the appropriate methodology to be employed to verify that an electronic submission will be made under the authority of the appropriate person—the regulations will not specify how a submission should be authenticated. However, the Office intends to require that, in the case where a submission is made electronically, a licensee and a copyright owner/agent develop mutually acceptable protocols to verify the authenticity of the person serving the Notice.

9. *Harmless errors.* The statute requires that a person or entity who intends to use the compulsory license give notice to the copyright owner of the nondramatic musical work before or within thirty days after making, and before distributing any phonorecords of the work. The rules outline specific elements that are to be included in each Notice. This information helps the copyright owner identify which of his or her works are being used under the license. However, errors may occur in the preparation of these Notices, many of which do not affect the legal sufficiency of the Notice. For this reason, the Office proposes to adopt a new paragraph (g) to § 201.18 to clarify that such errors will be considered harmless and will not affect the validity of the Notice.

As stated in the initial notice of proposed rulemaking, the Office does not anticipate that it will have any role in resolving disputes about whether an error in a Notice is harmless.

RIAA/NMPA/HFA support this change and offer no further changes. DiMA also agrees with the change, although it suggests that the rule does not adequately address the major problems with the current system concerning service and payment. The Office agrees with DiMA's observation, but notes that the proposed change is meant only to clarify that a Notice need not be perfect to give proper notice of use under the law. Nor is the rule to be construed as a ''safe harbor'' for a licensee who fails to serve adequate notice on the proper copyright owner in a timely manner.

10. *Fee for filing Notices of Intention.*[4] Section 201.18(e)(3) of 37 CFR provides, in pertinent part, that when a Notice of Intention is filed with the Office because the copyright owner is no longer at the last address indicated in the Copyright Office's records or has refused to accept delivery, no filing fee will be required. The Office proposed to amend § 201.18(e) to remove this provision. The fee charged for the filing of a Notice, like most other Copyright Office fees, is based upon the Office's costs in performing the service. *See* Fees and Registration of Claims to Copyright, 64 FR 29518 (June 1, 1999). Thus, the Office intends to amend its rules to require a filing fee in each instance where the Notice is filed with the Copyright Office without regard to the licensee's reason for filing the Notice with the Office.

While filing a Notice listing multiple titles simplifies the process for licensees, the Office still must index each title included on the Notice, thereby incurring costs for each title. The current cost for filing a Notice of Intention is $12. This fee may be changed only after the Register has studied the costs incurred by the Copyright Office in connection with the filing and has submitted the proposed change in the fee to Congress, which has 120 days to disapprove the change in fee. 17 U.S.C. 708(a)(5), (b). The Register will review the cost of processing multiple-title Notices and will present a proposal to modify this fee to Congress. Meanwhile, however, because the $12 fee would clearly be inadequate to cover the costs of processing Notices of Intention containing large numbers of titles, the proposed regulation will provide that for purposes of calculating fees, a Notice which lists multiple works shall be considered a composite filing of multiple Notices, and that fees shall be paid accordingly (*i.e.*, a separate $12 fee shall be paid for each work listed in the Notice). It is anticipated that this fee for the filing of multiple-title Notices will be decreased significantly when the Register makes her fee proposal to Congress.

11. *Certificate of Filing.*[5] Section 201.18(e)(1) of 37 CFR provided, in pertinent part, that ''[u]pon request and payment of the fee specified in § 201.3(e), a Certificate of Filing [of a Notice of Intention] will be provided to the sender.'' This Certificate of Filing is in addition to a written acknowledgment of receipt and filing that the Office routinely provides to a person who files a Notice.

The Office has reexamined this rule and has determined that the issuance of a Certificate of Filing serves no useful purpose, given that the Office routinely provides a written acknowledgment of receipt and filing. Moreover, a person who wishes to obtain official certification of the filing of a Notice of Intention may do so pursuant to the

[4] The citations to 37 CFR 201.18(e) in this section refer to the rule prior to its redesignation under the proposed rules announced in this document.

[5] The citations to 37 CFR 201.18(e)(1) in this section refer to the rule prior to its redesignation under the proposed rules announced in this document.

existing regulations governing certified copies of Copyright Office records. *See* 37 CFR 201.2(d).

Because there is no identifiable reason to incur the extra time and expense associated with the issuance of a Certificate of Filing for each Notice that is filed with the Copyright Office, the Office intends to delete that portion of § 201.18(e)(1) that provides for a Certificate of Filing from the Licensing Division of the Copyright Office.

12. *Other issues. a. Safe harbor.* Napster and DiMA advocate the creation of a safe harbor to avoid any copyright infringement liability which may occur during the time it takes to implement any desired electronic systems. In essence, these entities are asking for a rule that would hold harmless any past infringing activity in the case where an online service has not complied with the rules for obtaining a compulsory license because of the difficulties associated with filing multiple Notices or due to a dispute between the publishers and the services over the need for the license. Napster at 7; DiMA at 5 n.6. The Office has no authority to promulgate regulations that would effectively absolve a compulsory licensee from liability for past errors or inadvertent errors under the new procedures. *See* 63 FR 25394 (May 8, 1998) (rejecting proposed term in rate setting proceeding that would have limited liability of a statutory licensee to acts which materially breach the statutory license terms).

b. Database. DiMA asks the Office to establish a complete and up-to-date electronic database of all musical works registered with the Copyright Office that are still under copyright protection, arguing that an electronic database will make it easier for all companies to search the registration files. Certainly, the creation of an all-inclusive database is a laudable goal and deserves serious consideration, but it is not the subject of this proceeding nor a realistic goal at this time. Consequently, the Office has proposed modest changes to its regulations that can be implemented immediately to the benefit of those companies that wish to utilize the statutory license in the immediate future. If needed, further amendments may be considered at a future time.

c. Extension of current mechanical licenses to cover DPDs. DiMA suggests that the Office promulgate ''a minimal set of regulations for the common situation in which online entities will be distributing digital phonorecord deliveries of sound recordings already covered by a mechanical license.'' DiMA offers little explanation for its suggestion, which may be intended to permit someone who intends to use the section 115 DPD license to rely upon a previously served Notice of Intention to use the section 115 mechanical license. The benefits of such a provision for licensees are apparent, but copyright owners, who have had no opportunity thus far to respond to DiMA's proposal, may well have compelling reasons to oppose it. The Office is unwilling to consider such a proposal, which was not included in the initial notice of proposed rulemaking, at this time without the benefit of further comment from both copyright owners and users of the compulsory license. The Office invites elaboration on this proposal by DiMA and comment on this proposal by copyright owners and other users of the compulsory license. In light of the intention to publish a final rule shortly after the close of the comment period, it is highly unlikely the final rule promulgated in this proceeding will include such an innovation, but comments received on this issue will be considered by the Office for possible future action.

d. Royalty Payments and Statements of Account. DiMA seeks a regulation that would allow the Copyright Office or an agent designated by the Copyright Office to receive payments of royalty fees and statements of accounts. We recognize that DiMA's suggestion offers efficiencies for licensees, but the Copyright Office has no authority to adopt the proposed payment mechanism through a notice and comment proceeding. First, the Copyright Office collects royalty fees only in three instances and in each case Congress has expressly delegated the responsibility to the Office. *See* 17 U.S.C. 111(d)(2), 119(b)(1), and 1005. Without similar statutory authority to collect royalty fees under section 115, the Copyright Office cannot promulgate regulations directing or permitting a compulsory licensee to make monthly royalty payments directly to the Copyright Office. Second, the Copyright Office cannot unilaterally designate an entity as an agent to receive these fees.

In a past proceeding to set rates and terms for the section 114 license, the parties to that proceeding proposed a term to the Copyright Arbitration Royalty Panel (''CARP''), the administrative entity with the authority and responsibility for adopting terms of payment for that license, designating a single collective for the purpose of receiving and distributing the royalty fees. Recognizing the administrative efficiencies for the interested parties and after finding that it was not contrary to law for the parties to the section 114 rate setting proceeding to agree upon a collective to receive and distribute the royalty payments on behalf of all affected copyright owners, the Librarian adopted the stipulated term of payment. *See* 63 FR 25394 (May 8, 1998). However, in that context the Librarian of Congress has the power to establish the terms of royalty payments. *See* 17 U.S.C. 114(f). The Office has no such authority under section 115. Moreover, because this rulemaking is directed only toward amending the current regulations in order to streamline the procedures for serving Notices of Intention and Statements of Account, the Office finds DiMA's proposal to designate a collective for the purpose of collecting the section 115 royalties beyond the scope of this proceeding.

DiMA has also asked the Copyright Office to adopt regulations to permit quarterly rather than monthly filing of the statements of account and to permit the withholding of fees below a certain threshold level. It cites the administrative costs associated with the distribution of *de minimis* fees and speculates that on-line music services may decide not to offer works of minor interest because the costs of administering the license for these works is disproportionately high compared to the royalties to be paid. The schedule of payment, however, is not an appropriate subject for a rulemaking proceeding. Section 115(c)(5) requires a licensee to make monthly payments. The only way to alter the schedule for payment is through an amendment to the law. No agency has the authority to promulgate regulations that alter requirements set forth in the law.

e. Filings with the Copyright Office. DiMA suggests that the Office draft regulations that would allow licensees to offset costs associated with filing Notices with the Office in those situations where the copyright owner wrongly refuses service. It suggests that licensees might be allowed to deduct the administrative costs associated with such filings from the royalty fees. Again, this is a subject beyond the scope of the current rulemaking proceeding and, thus, it will not be considered at this time.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.18 is revised to read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *General.* (1) A ''Notice of Intention'' is a Notice identified in section 115(b) of title 17 of the United States Code, and required by that section to be served on a copyright owner or, in certain cases, to be filed in the Copyright Office, before or within thirty days after making, and before distributing any phonorecords of the work, in order to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. A Notice of Intention may designate any number of nondramatic musical works, provided that the copyright owner of each designated work or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and that the information required under paragraphs (d)(1)(i)–(iv) of this section does not vary. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (*i.e.*, a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(4) For the purposes of this section, service of a Notice of Intention on a copyright owner may be accomplished by means of service of the Notice on either the copyright owner or an agent of the copyright owner with authority to receive the Notice. In the case where the work has more than one copyright owner, the service of the Notice on any one of the co-owners of the nondramatic musical work or upon an authorized agent of one of the co-owners identified in the Notice of Intention shall be sufficient with respect to all co-owners. Notwithstanding paragraph (a)(2) of this section, a single Notice may designate works not owned by the same copyright owner in the case where the Notice is served on a common agent of multiple copyright owners, and where each of the works designated in the Notice is owned by any of the copyright owners who have authorized that agent to receive Notices.

(5) For purposes of this section, a copyright owner or an agent of a copyright owner with authority to receive Notices of Intention may make public a written policy that it will accept Notices of Intention to make and distribute phonorecords pursuant to 17 U.S.C. 115 which include less than all of the information required by this section, in a form different than required by this section, or delivered by means (including electronic transmission) other than those required by this section. Any Notice provided in accordance with such policy shall not be rendered invalid for failing to comply with the specific requirements of this section.

(6) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord manufactured, made, and distributed on the date the phonorecord is digitally transmitted.

(b) *Agent.* An agent who has authority to accept Notices of Intention in accordance with paragraph (a)(4) of this section and who has received a Notice of Intention on behalf of a copyright owner shall provide within two weeks of the receipt of that Notice of Intention the name and address of the copyright owner or its agent upon whom the person or entity intending to obtain the compulsory license shall serve Statements of Account and the monthly royalty in accordance with § 201.19(a)(4).

(c) *Form.* The Copyright Office does not provide printed forms for the use of persons serving or filing Notices of Intention.

(d) *Content.* (1) A Notice of Intention shall be clearly and prominently designated, at the head of the notice, as a ''Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(i) The full legal name of the person or entity intending to obtain the compulsory license, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(ii) The telephone number, the full address, including a specific number and street name or rural route of the place of business, and an e-mail address, if available, of the person or entity intending to obtain the compulsory license, and if a business organization intends to obtain the compulsory license, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location.

(iii) The information specified in paragraphs (d)(1)(i) and (ii) of this section for the primary entity expected to be engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution (for example: a record company or digital music service), if an entity intending to obtain the compulsory license is a holding company, trust or other entity that is not expected to be actively engaged in the business of making and distributing phonorecords under the license or of authorizing such making and distribution;

(iv) The fiscal year of the person or entity intending to obtain the compulsory license. If that fiscal year is a calendar year, the Notice shall state that this is the case;

(v) For each nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license:

(A) The title of the nondramatic musical work;

(B) The name of the author or authors, if known;

(C) A copyright owner of the work, if known;

(D) The types of all phonorecord configurations already made (if any) and expected to be made under the compulsory license (for example: Single disk, long-playing disk, cassette, cartridge, reel-to-reel, a digital phonorecord delivery, or a combination of them);

(E) The expected date of initial distribution of phonorecords already made (if any) or expected to be made under the compulsory license;

(F) The name of the principal recording artist or group actually engaged or expected to be engaged in rendering the performances fixed on phonorecords already made (if any) or expected to be made under the compulsory license;

(G) The catalog number or numbers, and label name or names, used or expected to be used on phonorecords already made (if any) or expected to be made under the compulsory license; and

(H) In the case of phonorecords already made (if any) under the

compulsory license, the date or dates of such manufacture.

(vi) In the case where the Notice will be filed with the Copyright Office pursuant to paragraph (f)(3) of this section, the Notice shall include an affirmative statement that with respect to the nondramatic musical work named in the Notice of Intention, the registration records or other public records of the Copyright Office have been searched and found not to identify the name and address of the copyright owner of such work.

(2) A ''clear statement'' of the information listed in paragraph (d)(1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and without incorporation by reference of facts or information contained in other documents or records.

(3) Where information is required to be given by paragraph (d)(1) of this section ''if known'' or as ''expected,'' such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting the accuracy of such information shall not affect the validity of the Notice.

(e) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license or by a duly authorized agent of such person or entity.

(1) If the person or entity intending to obtain the compulsory license is a corporation, the signature shall be that of a duly authorized officer or agent of the corporation.

(2) If the person or entity intending to obtain the compulsory license is a partnership, the signature shall be that of a partner or of a duly authorized agent of the partnership.

(3) If the Notice is signed by a duly authorized agent for the person or entity intending to obtain the compulsory license, the Notice shall include an affirmative statement that the agent is authorized to execute the Notice of Intention on behalf of the person or entity intending to obtain the compulsory license.

(4) If the Notice is served electronically, the person or entity intending to obtain the compulsory license and the copyright owner shall establish a procedure to verify that the Notice is being submitted upon the authority of the person or entity intending to obtain the compulsory license.

(f) *Filing and service.* (1) If the registration records or other public records of the Copyright Office identify the copyright owner of the nondramatic musical works named in the Notice of Intention and include an address for such owner, the Notice may be served on such owner by mail sent to, or by reputable courier service at, the last address for such owner shown by the records of the Office. It shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

(2) If the Notice is sent by mail or delivered by reputable courier service to the last address for the copyright owner shown by the records of the Copyright Office and the Notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (f)(2) shall be submitted to the Licensing Division of the Copyright Office, shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and may be accompanied by appropriate evidence that it was mailed to, or that delivery by reputable courier service was attempted at, that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, or the date delivery by courier service was attempted, if shown by the evidence mentioned above, as the date of filing. An acknowledgment of receipt and filing will be provided to the sender.

(3) If, with respect to the nondramatic musical works named in the Notice of Intention, the registration records or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice may be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by the fee specified in § 201.3(e). A separate fee shall be assessed for each title listed in the Notice. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when the Notice and fee are both received in the Copyright Office. An acknowledgment of receipt and filing will be provided to the sender.

(4) Alternatively, if the person or entity intending to obtain the compulsory license knows the name and address of the copyright owner of the nondramatic musical work, or the agent of the copyright owner as described in paragraph (a)(4) of this section, the Notice of Intention may be served on the copyright owner or the agent of the copyright owner by sending the Notice by mail or delivering it by reputable courier service to the address of the copyright owner or agent of the copyright owner. For purposes of section 115(b)(1) of title 17 of the United States Code, the Notice will not be considered properly served if the Notice is not sent to the copyright owner or the agent of the copyright owner as described in paragraph (a)(4) of this section, or if the Notice is sent to an incorrect address.

(5) If a Notice is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the person or entity intending to obtain the compulsory license shall bear the burden of proving that the Notice was served on the copyright owner or its authorized agent in a timely manner.

(6) If a Notice served upon a copyright owner or an authorized agent of a copyright owner identifies more than 50 works that are embodied or intended to be embodied in phonorecords made under the compulsory license, the copyright owner or authorized agent may send the person who served the Notice a demand that a list of each of the works so identified be resubmitted in an electronic format, along with a copy of the original Notice. The person who served the Notice must submit such a list, which shall include all of the information required in paragraph (d)(1)(v) of this section, within 30 days after receipt of the demand from the copyright owner or authorized agent. The list shall be submitted on magnetic disk or another medium widely used at the time for the electronic storage of data, in the form of a flat file, word processing document or spreadsheet readable with computer software in wide use at such time, with the required information identified and/or delimited so as to be readily discernible. The list may be submitted by means of electronic transmission (such as e-mail) if the demand from the copyright owner or authorized agent states that such submission will be accepted.

(g) *Harmless errors.* Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States Code, shall not render the Notice invalid.

3. Section 201.19 is amended as follows:

a. By revising paragraph (a)(3);

b. By redesignating paragraphs (a)(4) through (a)(11) as paragraph (a)(5) through (a)(12), respectively;

c. By adding a new paragraph (a)(4);

d. By removing ''subparagraph (B) of this § 201.19(a)(5)(iii)'' and adding ''paragraph (a)(7)(iii)(B) of this section'' in its place each place it appears;

e. By removing ''paragraph (B) of this § 201.19(a)(5)(iii)'' and adding ''paragraph (a)(7)(iii)(B) of this section'' in its place each place it appears;

f. In newly designated paragraph (a)(7), by removing ''paragraph (a)(5)'' and adding ''paragraph (a)(6) of this section'' in its place;

g. In paragraph (c)(2)(iii), by removing ''paragraph (a)(7)'' and adding ''paragraph (a)(10)'' in its place;

h. In paragraph (d), by removing ''§ 201.19(a)(4)'' and adding ''paragraph (a)(5) of this section'' in its place;

i. By revising paragraph (e)(7)(i);

j. By revising paragraph (e)(7)(ii)(A);

k. In paragraph (e)(7)(ii)(B), by removing ''§ 202.19(e)(7)(ii)'' and adding ''this paragraph (e)(7)(ii)'' in its place;

l. In paragraph (e)(7)(ii)(D), by removing ''this § 201.19(e)(7)(ii)'' and adding ''this paragraph (e)(7)(ii)'' in its place;

m. By adding a new paragraph (e)(7)(iv);

n. By revising paragraph (f)(3)(iii);

o. In paragraph (f)(4)(ii), by removing ''paragraphs (A) through (F) of this § 201.19(f)(4)(i)'' and adding ''paragraphs (f)(4)(i)(A) through (F) of this section'' in its place;

p. In paragraph (f)(5), by removing ''[subject to paragraph (f)(3)(iii)(A)]';

q. By revising paragraph (f)(7)(i);

r. By revising paragraph (f)(7)(iii)(A);

s. In paragraph (f)(7)(iii)(B), by removing ''§ 202.19(f)(7)(iii)'' and adding ''this paragraph (f)(7)(iii)'' in its place; and

t. By adding a new paragraph (f)(7)(iv).

The revisions and additions to § 201.19 read as follows:

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(3) For the purposes of this section, the term copyright owner, in the case of any work having more than one copyright owner, means any one of the co-owners.

(4) For the purposes of this section, the service of a Statement of Account on a copyright owner under paragraph (e)(7) or (f)(7) of this section may be accomplished by means of service on either the copyright owner or an agent of the copyright owner with authority to receive Statements of Account on behalf of the copyright owner. In the case where the work has more than one copyright owner, the service of the Statement of Account on one co-owner or upon an agent of one of the co-owners shall be sufficient with respect to all co-owners.

* * * * *

(e) * * *

(7) *Service.* (i) Each monthly Statement of Account shall be served on the copyright owner or the agent with authority to receive Statements of Account on behalf of the copyright owner to whom or which it is directed, together with the total royalty for the month covered by the Monthly Statement, by mail or by reputable courier service on or before the 20th day of the immediately succeeding month. However, in the case where the licensee has served its Notice of Intention upon an agent of the copyright owner pursuant to § 201.18, the licensee is not required to serve Statements of Account or make any royalty payments until the licensee receives from the agent with authority to receive the Notice of Intention notice of the name and address of the copyright owner or its agent upon whom the licensee shall serve Statements of Account and the monthly royalty fees. Upon receipt of this information, the licensee shall serve Statements of Account and all royalty fees covering the intervening period upon the person or entity identified by the agent with authority to receive the Notice of Intention by or before the 20th day of the month following receipt of the notification. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(ii)(A) In any case where a Monthly Statement of Account is sent by mail or reputable courier service and the Monthly Statement of Account is returned to the sender because the copyright owner or agent is no longer located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Monthly Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

* * * * *

(iv) If a Monthly Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the compulsory licensee shall bear the burden of proving that the Statement of Account was served on the copyright owner or its authorized agent in a timely manner.

(f) * * *

(3) * * *

(iii) If the compulsory licensee is a business organization, the name and title of the chief executive officer, managing partner, sole proprietor or other person similarly responsible for the management of such entity.

* * * * *

(7) *Service.* (i) Each Annual Statement of Account shall be served on the copyright owner or the agent with authority to receive Statements of Account on behalf of the copyright owner to whom or which it is directed by mail or by reputable courier service on or before the twentieth day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

* * * * *

(iii)(A) In any case where an Annual Statement of Account is sent by mail or by reputable courier service and is returned to the sender because the copyright owner or agent is not located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Annual Statement of Account, together with any evidence of mailing or attempted delivery by courier service, may be filed in the Licensing Division of the Copyright Office. Any Annual Statement of Account submitted for filing shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

* * * * *

(iv) If an Annual Statement of Account is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. In the absence of a receipt of mailing by certified mail or registered mail, the licensee shall bear the burden of proving that the Annual Statement of Account was served properly in a timely manner.

* * * * *

Dated: March 8, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04–5595 Filed 3–10–04; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 115–CMT; FRL–7635–3]

Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM–10 Standards; Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule published February 4, 2004 (69 FR 5412), proposing to approve the ''2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller,'' submitted on August 19, 2003, and Amendments to that plan submitted on December 30, 2003, as meeting the Clean Air Act requirements applicable to the San Joaquin Valley, California PM–10 (particulate matter of 10 microns or less) nonattainment area. The original comment period closed on March 5, 2004.

DATES: The comment period on the proposed rule is reopened and comments must be received by March 19, 2004.

ADDRESSES: Mail comments to Doris Lo, Planning Office (AIR2), EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments may also be submitted electronically to *lo.doris@epa.gov* or through hand delivery/courier.

FOR FURTHER INFORMATION CONTACT: Doris Lo, Planning Office (AIR2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. (415) 972–3959, email: *lo.doris@epa.gov.*

Dated: March 4, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–5509 Filed 3–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–165–1–7610; FRL–7635–1]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications Including Incorporation of Marine Vessel Emissions in Applicability Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on September 16, 2002, to revise the definitions of ''building, structure, facility, or installation'' and ''secondary emissions'' as defined in section 116.12 and section 116.160. This also includes revisions to section 116.160 and section 116.162 to incorporate updated Federal regulation citations. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act or CAA).

DATES: Comments on the proposed action must be received by April 12, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the General Information section of the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi of the Air Permits Section at (214) 665–7520, or *kordzi.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

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I. What State Rules Are Being Addressed in This Document?

In today's action we are proposing to approve into the Texas SIP revisions to Title 30 of the Texas Administrative Code (30 TAC) sections 116.12, Nonattainment Review Definitions; 116.160, Prevention of Significant Deterioration Requirements; and 116.162, Evaluation of Air Quality Impacts. The TCEQ adopted these revisions on October 10, 2001, and submitted the revisions to us for approval as a revision to the SIP on September 16, 2002.

30 TAC section 116.12—Nonattainment Review. The previous State version of this section, which is the existing SIP-approved version (see 65 FR 43994, July 17, 2000), excludes the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, deletes the ''except the activities of any vessel'' clause from 116.12(4). Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for nonattainment permits.

30 TAC section 116.160—Prevention of Significant Deterioration Requirements. The previous State version of this section, which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), incorporates by reference the Federal Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21, as amended June 3, 1993. Those regulations excluded the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, excludes the CFR definition of ''building, structure, facility, or installation,'' because the CFR definition includes language vacated by the court in *Natural Resources Defense Council* v. *EPA,* 725 F.2d 761 (D.C. Cir. 1984) (see discussion below under ''Legal Background''). Instead, the revised version of section 116.160 defines ''building, structure, facility, or installation'' consistent with the definition in revised section 116.12, discussed above. Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for PSD permits. In addition, the revised section 116.160 replaces the definition of ''secondary emissions'' at 40 CFR 52.21 with language consistent with the NRDC decision.

The revised section 116.160 otherwise incorporates the version of the Federal PSD air quality regulations promulgated at 40 CFR 52.21 in 1996, as well as the most recent version of 40 CFR 51.301 (amended 1999).