minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

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

Technical Standards

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

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–035 is added to read as follows:

§ 165.T09–035 Safety Zone; Canal Fest, Tonowanda, NY.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Niagara River within the following boundaries: Starting at 43° 01′ 07″ N, 078° 53′ 53″ W; then to 43° 01′ 00″ N, 078° 53′ 29″ W; then to 43° 01′ 20″ N, 078° 53′ 03″ W; then to 43° 01′ 30″ N, 078° 53′ 30″ W; then following the shoreline back to the beginning. The fireworks display will originate from a barge moored in the center of this zone at 43° 01′ 16″ N, 078° 53′ 32″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 11:30 p.m. (local) on July 25, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 1, 2004.

P.M. Gugg,

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

[FR Doc. 04–14065 Filed 6–21–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–6B]

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

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is amending 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.

EFFECTIVE DATE: July 22, 2004.

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 in a phonorecord without the consent of the copyright owner if certain conditions are met and royalties are paid.

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'').[1] *See* 17 U.S.C. 115(c)(3)(A). As defined in the law, a digital phonorecord delivery (DPD) 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 DMCA did not change or alter the longstanding notice requirement set forth in section 115(b) which requires a person who wishes to obtain a compulsory license under section 115 to notify the copyright owner of his or her intention to use the copyright owner's musical work to make and distribute phonorecords under the section 115 license. 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). It is now evident that 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 (''NPRM'') 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). After considering the comments from the record industry, music publishers and potential new users of the license who seek to make digital phonorecord deliveries under the section 115 license, the Office published a set of proposed regulations that would allow, among other things, service on an agent, the listing of multiple works on a single notice, and use of an address other than the one listed in the Copyright Office records. In proposing these rules, however, the Office identified three issues pertinent to the rulemaking that either had not been presented to the public for comment or that required further comment from the parties before the Office could issue a final rule. For this reason, the Office published yet another NPRM for the purpose of offering interested parties an opportunity to comment on these three issues: (1) Whether licensees should be required to send statements of account and royalty payments to the agent to whom the notice of intention was sent until the agent or the copyright owner advises the licensee that the statements and payments should be sent elsewhere; (2) whether it is advisable to simplify the requirement that a licensee provide information concerning its ownership, officers and directors; and (3) the sufficiency of a Notice to cover all possible configurations, including those not listed specifically on the notice. 69 FR 11566 (March 11, 2004).

II. Comments and Discussion

The Copyright Office received six comments in response to the March 11 notice from the National Music Publishers' Association, Inc. (''NMPA'') and The Harry Fox Agency, Inc. (''HFA''), jointly; the Digital Media Association (''DiMA''); Yemi Adegbonmire; the Recording Industry Association of America, Inc. (''RIAA''); NMPA/HFA/RIAA, jointly; and Music Reports, Inc. (''MRI'').[2]

All commenters who expressed an opinion supported proposed rule § 201.18(b), which would require the authorized agent of a copyright owner, within two weeks of receiving a notice, to provide the licensee the name and address of the person to whom the licensee shall submit Statements of Account and royalty payments. They agreed that the rule balanced the equities fairly between the licensee, who bears the responsibility for serving the notice on the proper party in the first instance, and the copyright owner. RIAA/NMPA/HFA went on to note that the alternative proposal—to allow a licensee to make payments and file statements on the agent authorized to accept the notice—would open the door to disputes concerning misdirected payments which could be difficult and time consuming to resolve after the fact. We find this reasoning compelling.

The second proposal—to eliminate the requirement that a licensee provide certain information concerning its ownership, officers and directors, and substitute greatly simplified requirements—also generated no controversy. RIAA/NMPA/HFA had maintained that the current rules require more information than needed to meet the copyright owner's legitimate right to know with whom it is dealing and may well impose a needless burden on licensees. In light of these assertions by both copyright owners and users, the Office proposed to amend the rule and adopt the RIAA/NMPA/HFA proposal which requires that a licensee provide only the name and title of the licensee's CEO, managing partner or the like, and identifying information for the primary entity (such as a record company or digital music service) expected to be actively engaged in business under the license, if that entity is other than the licensee itself. Because the proposed amendment to the rules provide sufficient information to identify the licensee and no party opposes the proposed changes, the Copyright Office is adopting the proposed amendments as announced in the March 11 notice.

The only issue over which the commenters disagreed was whether a single Notice of Intention to use a particular work is sufficient notice to cover all possible format configurations, including both those specifically identified on the notice and those which could be used although not listed on the notice. The question arose because of a comment DiMA made in its initial comment suggesting 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.'' Because DiMA's suggestion was unclear, the Office opined that DiMA's suggestion may have been intended to permit a licensee to rely upon an earlier-filed notice, *e.g.*, one filed in order to use the license to make physical phonorecords, to cover the making of DPDs even though the digital phonorecord format configuration was not listed on that notice. We had stated in the March 11 notice that while it was highly unlikely the final rule promulgated in this proceeding would include any further amendments to address DiMA's suggestion, we would consider DiMA's proposal and comments received on this issue for possible future action.

DiMA, however, did not elaborate on its earlier comment, obviating the need to consider its suggestion further. On the other hand, HFA/NMPA and RIAA did file comments on the Office's proposed interpretation of DiMA's suggestion. Interestingly, the record company representatives and the publishing interests representatives take

[1] 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. *See* 17 U.S.C. 115(c)(3)(H).

[2] The MRI comment was received on May 4, 2004, nearly a month after the date specified in the March 11 **Federal Register** notice for filing comments. Nevertheless, the Office has considered its comments since review of its comment has not impeded the process nor caused any undue prejudice to the other interested parties.

diametrically opposed positions on whether a single notice covers all configuration formats or whether additional Notices need to be filed each time the licensee expects to use the musical work in a format not previously identified.

RIAA maintains that the current regulations already ''permit a licensee under section 115 to rely upon a Notice of Intention that had been previously served or filed to make DPDs.'' It notes that the Copyright Act recognizes a single compulsory license within section 115 and covers the making and distribution of a nondramatic musical work by means of a digital audio transmission that results in a digital phonorecord delivery (''DPD'') and that the regulations treat DPDs as merely another phonorecord configuration. RIAA then turns to the regulatory text, focusing on the provision that requires the licensee to identify those phonorecord configurations already made and those expected to be made under the license. *See* 37 CFR 201.18(c)(1)(iv). It maintains that the phrase ''expected to be made'' does not require absolute precision and that the licensee need only provide the information ''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.'' 37 CFR 201.18(d)(3), as amended. According to RIAA, these provisions when taken together do not require the filing of subsequent notices merely because a new type of phonorecord configuration is being made and distributed under the section 115 license.

RIAA then cites to an HFA comment offered during the initial rulemaking proceeding,[3] the purpose of which was to establish notice and recordkeeping requirements for use of the section 115 license, where HFA stated that it could accept the filing of a single notice which listed all phonorecord configurations contemplated at the time of the notice, provided that ''the regulations insure adequate notice of use of additional forms to be filed for each type of phonorecord configuration of a particular sound recording of a particular song (which we feel is necessary for purposes of clarity and sensible accounting in any event).'' Supplemental Statement Concerning Regulations to be Promulgated by the Copyright Office Relative to the Compulsory License Provisions of the Copyright Act (section 115), submitted by the Harry Fox Agency, Inc., May 26, 1977. RIAA opines that the Office adopted HFA's position and promulgated §§ 201.19(e)(3)(ii)(D) and (f)(4), at least in part, to serve this purpose. These two provisions of the rules require that specific accounting information be reported separately for each phonorecord configuration, thus giving the publishers accurate and timely information about the number and types of phonorecords being made and distributed under the compulsory license.

NMPA and HFA take a radically different view of the current notice requirements. They now argue that any provision or interpretation which would allow the filing of a single Notice of Intention to cover format configurations beyond those identified on the notice, ''would disrupt longstanding industry practice and conflict directly with established jurisprudence.'' They maintain that it is standard industry practice to require each licensee to specify the configuration for which the licensee seeks the license. They argue that the reason for imposing configuration limitations is to provide the publishers with a means to track the licensee's use of the musical work and to insure that the appropriate royalty rate attaches to the different configurations. In support of their position, NMPA and HFA cite two court cases which held that the scope of a mechanical license was limited to the express terms of the license. *See Rodgers & Hammerstein Org.* v. *UMG Recordings, Inc.,* 00 Civ. 9322 (JSM), 2001 U.S. Dist. LEXIS 16111 (S.D.N.Y. Sept. 26, 2001), and *Fred Ahlert Music Corp.* v. *Warner/Chappell Music, Inc.,* 958 F. Supp. 170 (S.D.N.Y. 1997). Neither court, however, discusses the terms of use applicable to a section 115 statutory license.

The Office acknowledges that HFA and NMPA offer a well-articulated presentation of the current state of affairs with respect to mechanical licenses negotiated in the marketplace but finds that their discussion misses the mark. As a primary matter, HFA and NMPA overlook the fact that a voluntary license negotiated in the marketplace between a willing buyer and a willing seller are not the same as the license Congress granted to licensees who make and distribute phonorecords under the terms set forth in section 115 of the Copyright Act. The terms of the statutory license are set by Congress and are not subject to modification at will by the parties. Parties may use the statutory license as a starting point, adopting those provisions that meet their needs and modifying or eliminating those that do not. But, the result is a negotiated license which varies from the section 115 statutory license in significant ways.

NMPA and HFA, however, treat the statutory and negotiated licenses as one and the same. Thus, they rely on the courts' interpretation of voluntary license terms to inform the interpretation of similar statutory and regulatory provisions that govern the statutory license, but they fail to explain how the courts' interpretation of private commercial licenses relates to the regulatory framework and the policy considerations which underlie the notice and accounting requirements adopted by the Register of Copyrights in 1980.

The relevant question is whether the current regulations adopted in 1980 require a compulsory licensee to file a new notice in the case where the licensee seeks to expand its use of the section 115 license to cover phonorecord configurations not listed on the Notice of Intention to Use. A review of the comments and testimony from the rulemaking proceeding by which the current regulations were promulgated show that the question engendered some debate. During the early phase of that proceeding, publishers sought a rule that would require a licensee to file a separate notice for each separate type of phonorecord configuration, but they backed away from that position in their later comments. In Supplemental Comments filed on May 26, 1977, the Harry Fox Agency stated its willingness to permit use of a single notice listing those configurations the licensee is contemplating using at the time of service, provided that the licensee subsequently identified the use of new configurations on the accounting forms.

They may have changed their position in light of statements made by the Register of Copyrights during public hearings held by the Copyright Office in April 1977. In her comments, the Register spoke directly to the question and made the observation that the notice was to contain information that ''would be given as of the date that the Notice was filed, and there [was] no obligation that it be kept up-to-date.'' In taking this position, she contrasted the lack of a legal requirement to update a notice served under section 115 with

[3] This proceeding began on March 30, 1977, when the Copyright Office published a notice in the **Federal Register**, announcing public hearings to receive testimony on substantive issues related to formulating regulations concerning the form, content and manner of service of notices of intention and accounting statements. These hearings took place on April 26 and 27, 1977. 42 FR 16837 (March 30, 1977). It concluded nearly 2½ years later with the publication of final rules. 45 FR 79038 (November 28, 1980).

the notice requirements for use of the cable compulsory license ''where there is a requirement that it be kept up-to-date.'' Transcript of Second Hearing on Implementation of the Copyright Law Revision, Docket No. 77–3, at 46. (April 26, 1977).

Beyond the early exchanges, the parties did not address the question further and the Copyright Office issued interim regulations on December 29, 1977. 42 FR 64889 (December 29, 1977). These regulations did not include any provision that would require a licensee to submit a further formal notice to the copyright owner of actual use beyond the initial notice that listed format configurations the licensee was using at the time or expected to use in the future. The rules, however, did include, and still do, a requirement that the licensee provide the accounting information specified in §§ 201.19(e)(3)(ii)(D) and (f)(4)(i) for each phonorecord configuration actually made, thus seeming to adopt the HFA suggestion for using statements of account to provide further information on actual use.

In light of the fact that the purpose of the Notice of Intention is merely to give notice to the copyright owner of a licensee's intention to use the copyright owner's musical work to make and distribute phonorecords subject to the terms of the section 115 compulsory license, additional notices to update information that was correct at the time of service are not part of the statutory scheme. Once a notice is served, the copyright owner is on notice that the licensee will be using the identified musical work to make phonorecords. The licensee is then obligated to provide specific information about the types and numbers of phonorecords made and distributed as part of the monthly and annual statements of account, making it unnecessary to file follow-up notices for this purpose.

III. Additional Issues

1. Further revisions to § 201.19. DiMA offered no specific comment on the three questions posed in the March 11 notice, but it has requested that the Office modify § 201.19 as follows: (1) To permit statements of account to be signed and delivered by the compulsory licensee or a duly authorized agent preparing the statement; (2) to eliminate the requirement for a handwritten signature, given the ability to work through an agent; and (3) to permit service of the statements of account by regular mail or electronic delivery. MRI requests the same three modifications.

In the current rulemaking, the Office sought to amend its rules to expedite the filing of notices pursuant to section 115(b)(1) of the Copyright Act and offered proposed amendments to § 201.18 to achieve this goal, while at the same time proposing limited changes to § 201.19 in order to harmonize the service requirements between the two sections. *See* 66 FR 45241 (August 28, 2001). This notice expressly stated that the Office was not considering further changes to § 201.19 in this proceeding. *Id.* at 45242. While we understand DiMA's interest in pursuing additional amendments in the interest of streamlining the reporting process and will consider initiating a new rulemaking proceeding to address these issues, we will not place the current rulemaking on hold to consider new questions. The process with respect to amending the rules to streamline the process for serving notices under § 201.18 has come to an end, and it is in the interest of all parties that these final rules be adopted without delay.

As part of this proceeding, however, amendments have already been made to allow service of statements of account by regular mail. *See* 37 CFR 201.19(e)(7)(i), (ii) and (f)(7)(i) and (iii). Formerly, these provisions required service by certified mail or registered mail, but they have been amended to allow for service ''by mail or by reputable courier service.'' However, the proposed rules did not include a provision to permit service of statements of account by electronic delivery because this proceeding had not considered amendments to § 201.19 beyond those needed to provide the licensee with options for sending the Statements as currently prepared. The rules governing the Statements of Account differ significantly from those governing a Notice of Intention in that they require the person signing the document to certify the accuracy of the information in the Statements of Account. Consequently, it would appear that the signature of the certifying official constitutes a legal representation on behalf of the licensee that should not be dismissed lightly without comment from the affected parties and, thus, should be considered along with the other issues identified by DiMA and MRI in a separate rulemaking.

2. Date of filing. Adegbonmire noted that the amended rules did not clarify that a receipt from a reputable courier indicating the date of attempted delivery would be acceptable as evidence of the date of service, even though the March 11 notice stated that such proof would be sufficient to establish the date of service. He proposes amending proposed § 201.18(f)(5) to include language expressly stating that such receipt is acceptable proof for establishing the date of service. We agree and have made the necessary changes to proposed § 201.18(f)(5) and to §§ 201.19(e)(7)(iv) and (f)(7)(iv).

He also suggested that the rules expressly recognize use of a Delivery Confirmation receipt as proof of the date of service. We are unfamiliar with this service and decline to adopt the suggestion to specifically list a Delivery Confirmation receipt as evidence of the date of service. Sections 201.18(f)(5) and 201.19(e)(7)(iv), however, should not be interpreted as listing the only acceptable forms of proof. In fact, the last sentence in these provisions leaves open the possibility that the licensee may adduce other evidence to establish the date of service. For that reason, we see no reason to list every possible means of proof for establishing the date of service and have only acknowledged the two specific means the parties have already considered by virtue of the earlier notices.

3. Demand for electronic submission. Adegbonmire has also offered comment on the proposed regulation that would permit a copyright owner or its agent to demand that a notice containing more than 50 titles of works be resubmitted in an electronic format. He proposes setting the threshold at 25 titles rather than 50 to facilitate the process, though he does not state how it would do so. Consequently, we see no reason to reconsider the decision to set the threshold at more than 50 titles.

He also suggests that the rule itself violates the statute because the rule would allow a licensee to resubmit its notice in an electronic format within 30 days after receipt of the demand. We disagree. Provided that the initial notice adheres to the rules and is served on the copyright owner or its agent before or within 30 days of making, and before distributing any phonorecords of the listed works, then the licensee has fulfilled the statutory requirement to serve notice. The request for an electronic submission is a subsequent requirement that must be met in accordance with the rules. The requirement itself does not raise questions of whether the filing is timely; rather, it addresses compliance with format and submission requirements. Thus, failure to comply with the copyright owner's demand for an electronic submission would constitute a violation of the rules governing use of the license and could provide the basis for a copyright infringement suit.

There being no other matters for consideration, the Office is announcing final rules—incorporating the amendments discussed—governing the

filing of Notices of Intention to Use a section 115 license for the making and distribution of phonorecords.

IV. Regulatory Flexibility Act

Although the Copyright Office, as a department of the Library of Congress and part of the legislative branch, is not an ''agency subject to the Regulatory Flexibility Act,'' 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the amendments to §§ 201.18 and 201.19 on individual authors and small entities. The Register has determined that the final regulations will not have a significant economic impact on a substantial number of individual compulsory licensees or small entities that would require provision of special relief for small entities in the regulations, and that the final regulations are, to the extent consistent with the stated objectives of applicable statutes, designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

■ In consideration of the foregoing, the Copyright Office is amending 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 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) through (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 been authorized 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 of Intention is sent by certified mail or registered mail, a mailing receipt shall be sufficient to prove that service was timely. If a Notice of Intention is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the

Notice of Intention was served 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 the 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 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 the phrase ''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 the phrase ''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 the phrase ''paragraph (a)(5)'' and adding ''paragraph (a)(6) of this section'' in its place;

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

■ h. in paragraph (d) introductory text, by removing the phrase ''§ 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 the phrase ''§ 202.19(e)(7)(ii)'' and adding ''this paragraph (e)(7)(ii)'' in its place;

■ l. in paragraph (e)(7)(ii)(D), by removing the phrase ''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 the phrase ''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 the phrase ''[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 the phrase ''§ 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 Monthly 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 Monthly 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 Monthly Statements of Account and the monthly royalty fees. Upon receipt of this information, the licensee shall serve Monthly 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. If a Monthly Statement of Account is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Monthly Statement of Account was served 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 Annual 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 20th 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. If an Annual Statement of Account is delivered by a reputable courier, documentation from the courier showing the first date of attempted delivery shall also be sufficient to prove that service was timely. In the absence of a receipt from the United States Postal Service showing the date of delivery or documentation showing the first date of attempted delivery by a reputable courier, the compulsory licensee shall bear the burden of proving that the Annual Statement of Account was served in a timely manner.

* * * * *

Dated: June 7, 2004.

Marybeth Peters,

Register of Copyrights.

So Approved.

James H. Billington,

The Librarian of Congress.

[FR Doc. 04–14084 Filed 6–21–04; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities

CFR Correction

■ In Title 38 of the Code of Federal Regulations, parts 0 to 17, revised as of July 1, 2003, on page 420, § 4.114 is corrected by removing the entry for diagnostic code 7313.

[FR Doc. 04–55510 Filed 6–21–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 412

Prospective Payment Systems for Inpatient Hospital Services

CFR Correction

■ In Title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of Oct. 1, 2003, on page 477, § 412.525 is corrected by adding paragraph (b) as follows:

§ 412.525 Adjustments to the Federal prospective payment.

* * * * *

(b) *Adjustments for Alaska and Hawaii.* CMS adjusts the Federal prospective payment for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

* * * * *

[FR Doc. 04–55511 Filed 6–21–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7446]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director for the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster