Federal Register of September 29, 1998 (63 FR 51825). The document amended certain regulations governing establishment registration and device listing by domestic distributors. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4699.

SUPPLEMENTARY INFORMATION: In FR Docs. 98–25796 appearing on page 51825 in the **Federal Register** of September 29, 1998, the following correction is made:

On page 51826, in the third column, amendatory paragraph four is corrected to read:

4. Section 807.20 is amended by revising paragraph (a)(4), by removing paragraph (c), by redesignating paragraph (d) as paragraph (c), and by adding paragraph (c)(3) to read as follows:

* * * * *

Dated: November 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31569 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. RM 98–4 CARP]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and initiation of voluntary negotiation period.

SUMMARY: The Copyright Office is initiating the six-month voluntary negotiation periods, as required by the Digital Millennium Copyright Act of 1998, for negotiating terms and rates for two compulsory licenses, which in one case, allows public performances of sound recordings by means of eligible nonsubscription transmissions and by new subscription services, and in the second instance, allows the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording. In addition, the Office is adopting procedural regulations to implement the Digital Millennium Copyright Act of 1998.

EFFECTIVE DATES: The effective date of the regulation is December 28, 1998. The effective date of the initiation of the six-month voluntary negotiation periods is November 27, 1998.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On October 28, 1998, the President signed into law the ''Digital Millennium Copyright Act of 1998'' (''DMCA'' or ''Act''). Public Law 105–304. Among other things, the DMCA amends sections 112 and 114 of the Copyright Act, title 17 of the United States Code, to create a new license, governing the making of an ephemeral recording of a sound recording, and to expand another to facilitate the public performance of sound recordings by means of certain audio transmissions. *See* 17 U.S.C. 112(e)(1) and 114(d)(2). In amending these sections, Congress sought to ''first, further a stated objective of Congress when it passed the Digital Performance Right in Sound Recordings Act of 1995 (DPRA) to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services.'' H.R. Conf. Rep. No. 105–796, at 79–80 (1998).

In enacting the Digital Performance Right in Sound Recordings Act of 1995 (DPRA), Pub. L. 104–39, Congress created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions. The DMCA expands this license to allow a nonexempt eligible nonsubscription transmission and a nonexempt transmission by a preexisting satellite digital audio radio service to perform publicly a sound recording in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(a).

An ''eligible nonsubscription transmission'' is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings which purpose is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. A ''preexisting satellite digital audio radio service'' is a subscription digital audio radio service that received a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. *See* 17 U.S.C. 114(j)(6) and (10). Only two known entities, CD Radio and American Mobile Radio Corporation, qualify under the statutory definition as preexisting satellite digital audio radio services.

In addition to expanding the current 114 license, the DMCA creates a new statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord specified in section 112(a). 17 U.S.C. 112(e).

Determination of Reasonable Terms and Rates

The statutory scheme for establishing reasonable terms and rates is the same for both licenses. The terms and rates for the two new statutory licenses may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act. Because the DMCA does not establish reasonable rates and terms for either the new section 112 or the expanded section 114 license, the statute requires the Librarian of Congress to initiate a

voluntary negotiation period, the first phase in the rate setting process, within 30 days of enactment for the purpose of determining reasonable terms and rates for each license. *See* 17 U.S.C. 112(e)(4) and 114(f)(2)(A).

If the affected parties are able to negotiate an industry-wide agreement, then it will not be necessary for the parties to participate in an arbitration proceeding. In such cases, the Librarian of Congress will follow current rate regulation procedures and notify the public of the proposed agreement in a notice and comment proceeding. If no party with a substantial interest and an intent to participate in an arbitration proceeding files a comment opposing the negotiated rates and terms, the Librarian will adopt the proposed terms and rates without convening a copyright arbitration royalty panel. 37 CFR 251.63(b). If, however, no industry-wide agreement is reached, or only certain parties negotiate license agreements, then those copyright owners and users relying upon one or both of the statutory licenses shall be bound by the terms and rates established through the arbitration process.

Arbitration proceedings are initiated upon the filing of a petition for ratemaking with the Librarian of Congress during the 60 days immediately following the six month negotiation period. Arbitration cannot take place, however, unless a party files a petition even if the parties fail to negotiate a voluntary license agreement. 17 U.S.C. 112(e)(5) and 114(f)(1)(B).

The rates and terms established shall be effective during the period beginning on the effective date of the enactment of the DMCA and ending on December 31, 2000, or upon agreement by the affected parties, another mutually acceptable date. 17 U.S.C. 112(e)(5) and 114(f)(2)(A).

Initiation of Voluntary Negotiations

Pursuant to sections 112(e)(4) and 114(f)(2)(A), the Copyright Office of the Library of Congress is initiating the six-month voluntary negotiation periods for determining reasonable rates and terms for the statutory licenses permitting the public performance of a sound recording by means of certain digital transmissions and the making of a phonorecord in furtherance of these public performances. The negotiation period shall run from November 27, 1998, to May 27, 1999. Parties who negotiate a voluntary license agreement during this period are encouraged to submit two copies of the agreement to the Copyright Office at the above-listed address within 30 days of its execution.

Petitions

In the absence of a license agreement negotiated under 17 U.S.C. 112(e)(4) or 114(f)(2)(A), those copyright owners of sound recordings and entities availing themselves of the statutory licenses are subject to arbitration upon the filing of a petition by a party with a significant interest in establishing reasonable terms and rates for the statutory licenses. Petitions must be filed in accordance with 17 U.S.C. 803(a)(1) and may be filed anytime during the sixty-day period beginning six months after the publication of this document in the **Federal Register**. *See also* 37 CFR 251.61. Parties should submit petitions to the Copyright Office at the address listed in this notice. The petitioner must deliver an original and five copies to the Office.

Amendment of CARP Rules To Reflect Passage of the Digital Millennium Copyright Act of 1998

The DMCA creates two new compulsory licenses governing the public performance of certain audio transmissions and the making of ephemeral recordings to facilitate the transmission of certain public performances. In both instances, the reasonable rates and terms for the statutory license may be determined by a CARP, when voluntary negotiations prove unsuccessful. Therefore, the Copyright Office is amending its regulations to reflect the additional rate setting responsibilities of the Office and the CARP.

Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C., states that general notice of proposed rulemaking is not required for rules of agency organization or practice. Since the Office finds that the following final regulations are rules of agency organization, procedure, or practice, no notice of proposed rulemaking is required.

List of Subjects in 37 CFR Part 251

Administrative practice and procedures, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Copyright Office and the Library of Congress amend 37 CFR part 251 as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. In § 251.2, redesignate paragraphs (b) through (g) as (c) through (h), respectively, and add new paragraph (b) and revise newly redesignated paragraph (c) to read as follows:

§ 251.2 Purpose of Copyright Arbitration Royalty Panels

* * * * *

(b) To make determinations concerning royalty rates and terms for making ephemeral recordings, 17 U.S.C. 112(e);

(c) To make determinations concerning royalty rates and terms for the public performance of sound recordings by certain digital audio transmissions, 17 U.S.C. 114;

* * * * *

§ 251.58 [Amended]

3. In § 251.58, paragraph (c) is amended by adding the number ''112,'' after the number ''111,''.

§ 251.60 [Amended]

4. Section 251.60 is amended by removing the word ''subscription'' and adding in its place the phrase ''the making of ephemeral recordings (17 U.S.C. 112), certain'' after the term ''(17 U.S.C. 111),''.

5. In § 251.61, paragraph (a) is revised to read as follows:

§ 251.61 Commencement of adjustment proceedings

(a) In the case of cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Ephemeral Recordings: During a 60-day period prescribed by the Librarian in 1999, 2000, and at 2-year intervals thereafter, or as otherwise agreed to by the parties.

(3) Digital Audio Transmissions: For preexisting digital subscription transmission services and preexisting satellite digital audio radio services:

(i) During a 60-day period commencing on July 1, 2001 and at 5-year intervals thereafter, or

(ii) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of subscription digital audio transmission service; and for an eligible nonsubscription service or a new subscription service:

(A) During a 60-day period prescribed by the Librarian in 1999,

(B) During a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter,

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) Phonorecords: During 1997 and each subsequent tenth calendar year.

(5) Digital Phonorecord Deliveries: During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

* * * * *

§ 251.62 [Amended]

6. In § 251.62, paragraph (a) is amended by removing the word ''subscription'' and adding in its place the phrase ''ephemeral recordings, certain'' after the word ''cable,''.

Dated: November 18, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–31657 Filed 11–25–98; 8:45 am]

BILLING CODE 1410–33–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY29–1–187a; FRL–6193–5]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a correction to the State Implementation Plan (SIP) for the State of New York regarding the State's general prohibition on air pollution. EPA has determined that this rule was erroneously incorporated into the SIP. EPA is removing this rule from the approved New York SIP because the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 (''the Act''), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

EFFECTIVE DATE: This direct final rule is effective on January 26, 1999 without further notice, unless EPA receives adverse comment by December 28, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following address:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Correction to SIP

EPA has determined that Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR), which was approved in 1984 as part of the SIP, does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act and is not properly part of the SIP.

Part 211.2 is a general prohibition against air pollution. Such a general provision is not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy. After it came to the attention of EPA that Part 211.2 was not properly part of the SIP, EPA in turn brought the matter to the attention of the New York State Department of Environmental Conservation (NYSDEC). NYSDEC shared EPA's understanding that Part 211.2 was improperly approved into the SIP.

EPA, pursuant to section 110(k)(6) of the Act, is correcting the SIP since Part 211.2 is not reasonably related to the NAAQS-related air quality goals of the Act. Section 110(k)(6) of the amended Act provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.'' It should be noted that section 110(k)(6) has also been used by EPA to delete an improperly approved odor provision from the Wyoming SIP. 61 FR 47058 (1996).

Since the State of New York's Part 211.2 has no reasonable connection to the NAAQS-related air quality goals of the Act, EPA has found that the approval of this State rule was in error. The State has reached the same conclusion and concurs with EPA's decision that Part 211.2 was submitted and approved in error and should be removed from the approved SIP. Consequently, EPA is removing 6 NYCRR Part 211.2 from the approved New York SIP, pursuant to section 110(k)(6) of the Act.

II. EPA Final Rulemaking Action

EPA is removing 6 NYCRR Part 211.2 of the New York air quality Administrative Rules from the approved New York SIP pursuant to section 110(k)(6) of the Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 26, 1999 without further notice unless the Agency receives relevant adverse comments by December 28, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 26, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.)