

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

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

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

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing temporary safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13-132 to read as follows:

#### § 165.T13-132 Safety Zones; March Fireworks displays within the Captain of the Port, Puget Sound Area of Responsibility (AOR).

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Farmer's 100th Anniversary, Elliot Bay, WA*

(i) *Location.* All waters in the proximity of Pier 66, Elliot Bay, WA in an area extending to a 400 foot radius from the launch site at 47°36'31.54" N 122°21'06.00" W.

(ii) *Enforcement time and date.* 7 p.m. to 11:30 p.m. on March 6, 2010.

(2) *General Construction Event, Elliot Bay, WA*

(i) *Location.* All waters in the proximity of Pier 66, Elliot Bay, WA in an area extending to a 600 foot radius from the launch site at 47°36'55.00" N 122°21'05.80" W.

(ii) *Enforcement time and date.* 6 p.m. to 11:30 p.m. on March 27, 2010.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within these safety zones, except for vessels authorized by the Captain of the Port or Designated Representative.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at (206) 217-6002.

(d) *Effective Period.* This rule is effective from 7 p.m. March 6, 2010 through 12:01 a.m. March 28, 2010 unless canceled sooner by the Captain of the Port.

Dated: March 5, 2010.

**S.E. Englebert,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2010-6445 Filed 3-23-10; 8:45 am]

**BILLING CODE 9110-04-P**

#### LIBRARY OF CONGRESS

#### Copyright Royalty Board

#### 37 CFR Part 383

[Docket No. 2009-2 CRB New Subscription II]

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

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges are publishing final regulations setting the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2011, and ending on December 31, 2015.

**DATES:** These regulations become effective on January 1, 2011.

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

**SUPPLEMENTARY INFORMATION:** Section 114(f)(2)(C) of the Copyright Act, title 17 of the United States Code, allows a new type of eligible nonsubscription service or a new subscription service on which sound recordings are performed that is or is about to become operational to file a petition with the Copyright Royalty Judges ("Judges") for the purpose of determining reasonable terms and rates. 17 U.S.C. 114(f)(2)(C). Section 112(e) allows the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by new subscription services. 17 U.S.C. 112(e). Upon receipt of a petition filed pursuant to section 114(f)(2)(C), the Judges are required to commence a proceeding to determine said reasonable terms and rates. 17 U.S.C. 804(b)(3)(C)(ii). The Judges have conducted one proceeding pursuant to these provisions. See 70 FR 72471, 72472 (December 5, 2005) (after receipt of petition, commencing proceeding to determine rates and terms for a new type of subscription service that "performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television

channels as part of a 'basic' package of service and not for a separate fee"). The parties to that proceeding ultimately reached an agreement on the rates and terms for the new subscription service at issue; and the Judges, after public comment, adopted the settlement as final regulations.<sup>1</sup> See 72 FR 72253 (December 20, 2007). The current rates expire on December 31, 2010.

Pursuant to section 803(b)(1)(A)(i)(III) of the Copyright Act, the Judges published in the **Federal Register** a notice commencing the rate determination proceeding for the license period 2011–2015 for the new subscription service defined in 37 CFR 383.2(h) and requesting interested parties to submit their petitions to participate. See 74 FR 319 (January 5, 2009). Petitions to Participate in this proceeding were received from SoundExchange, Inc.; Royalty Logic, LLC ("RLI"); and Sirius XM Radio, Inc. (Sirius XM").

The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than September 29, 2009. On September 22, 2009, the Judges received a joint motion from all parties to stay the filing of the written direct statements in light of the parties reaching a settlement which they intended to submit to the Judges for adoption. On September 23, 2009, the Judges issued an order extending the deadline for the filing of written direct statements to October 29, 2009.<sup>2</sup>

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

(i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on January 22, 2010, the Judges published a notice seeking comment on the proposed rates and terms submitted to the Judges. 75 FR 3666. Comments were due by February 22, 2010. Having received no comments or objections to the proposed rates and terms, the Judges, by this notice, are adopting as final regulations the rates and terms for the use of sound recordings in transmissions made by new subscription services as defined in 37 CFR 383.2(h) and the making of ephemeral recordings necessary for the facilitation of such transmissions for the license period of 2011–2015 as published on January 22, 2010.

#### List of Subjects in 37 CFR 383

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

#### Final Regulation

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are amending 37 CFR part 383 as follows:

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

■ 1. The authority citation for part 383 continues to read as follows:

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

##### § 383.1 [Amended]

■ 2. Amend § 383.1 as follows:

- a. In paragraph (a), by removing "2010" and adding in its place "2015"; and
- b. In paragraph (b), by removing "112" and adding in its place "112(e)".

##### § 383.2 [Amended]

■ 3. Amend § 383.2 as follows:

- a. In paragraph (d), by removing "2010" and adding in its place "2015"; and
- b. In paragraph (e), by removing "112" and adding in its place "112(e)".
- 4. Amend § 383.3 as follows:
  - a. In paragraph (a) introductory text, by removing "112" and adding in its

place "112(e)" and by adding "during the License Period," after "such transmissions,";

■ b. In paragraph (a)(1)(ii)(E), by removing "and";

■ c. By adding new paragraphs (a)(1)(ii)(F) through (J);

■ d. By adding new paragraphs (a)(2)(ii)(F) through (J);

■ e. In paragraph (b), by removing "112" and adding in its place "112(e)"; and

■ f. By adding a new paragraph (c).

The additions to § 383.3 read as follows:

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

- (a) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (F) 2011: \$0.0155
- (G) 2012: \$0.0159
- (H) 2013: \$0.0164
- (I) 2014: \$0.0169
- (J) 2015: \$0.0174 and
- (2) \* \* \*
- (ii) \* \* \*
- (F) 2011: \$0.0258
- (G) 2012: \$0.0265
- (H) 2013: \$0.0273
- (I) 2014: \$0.0281
- (J) 2015: \$0.0290

(c) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions during the License Period for which it pays royalties as and when provided in this part shall be included within, and constitute 5% of, such royalty payments.

■ 5. Revise § 383.4 to read as follows:

#### § 383.4 Terms for making payment of royalty fees.

(a) *Terms in general.* Subject to the provisions of this section, terms governing timing and due dates of royalty payments to the Collective, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties by the Collective, unclaimed funds, designation of the Collective, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in 37 CFR part 382, subpart B of this chapter, for the license period 2007–2012. For purposes of this

<sup>1</sup> The new subscription service is defined at 37 CFR 383.2(h).

<sup>2</sup> SoundExchange and Sirius XM also moved that the Judges stay further proceedings until the settlement process under 17 U.S.C. 801(b)(7)(A) has been completed. They noted that RLI, the only other participant to the proceeding but not a signatory to the settlement, joined the request for stay. The Judges granted the motion. See Order on Joint Motion to Stay, Docket No. 2009–2 CRB New Subscription II (October 28, 2009).

section, the term "Collective" refers to the collection and distribution organization that is designated by the Copyright Royalty Judges. For the License Period through 2015, the sole Collective is SoundExchange, Inc.

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

(c) *Applicable regulations.* To the extent not inconsistent with this part, all applicable regulations, including part 370 of this chapter, shall apply to activities subject to this part.

Dated: March 19, 2010.

**James Scott Sledge,**  
Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010-6451 Filed 3-23-10; 8:45 am]

BILLING CODE 1410-72-P

## POSTAL SERVICE

### 39 CFR Part 111

#### Express Mail Open and Distribute and Priority Mail Open and Distribute Changes and Updates

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 705.16 to reflect changes and updates for Express Mail® Open and Distribute and Priority Mail® Open and Distribute to improve efficiencies in processing and to control costs.

**DATES:** *Effective Date:* April 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Karen Key, 202-268-7492 or Garry Rodriguez, 202-268-7281.

**SUPPLEMENTARY INFORMATION:** On January 29, 2010, the Postal Service published a **Federal Register** proposed rule (75 FR 4741-4742) inviting comments on a revision to change the standards for Express Mail Open and Distribute and Priority Mail Open and Distribute shipments, to discontinue the use of Label 23 and facsimile Tags 190 and 161, and to update the mailing standards. After reviewing the comments, and upon further consideration of the proposed revisions, the Postal Service adopts the proposed rule with minor revisions.

#### Comments

The Postal Service received five comments:

1. One commenter expressed concern about discontinuing the use of Label 23 and suggested tray boxes to

accommodate EMM trays. The Postal Service introduced tray boxes to address Open and Distribute customers' concerns on the security of their mail in a letter tray during processing. The current tray box sizes were a result of customer feedback. The decision to discontinue Label 23 supports our goal to provide a secure method for Open and Distribute containers.

2. One commenter recommended changes to the tray boxes. The Postal Service has determined that this suggestion is outside the scope of this final rule.

3. One commenter questioned discontinuing the optional use of facsimile Tag 190. The Postal Service's decision to standardize the tags and to discontinue the optional use of facsimile Tags 190 and 161 was made to ensure visibility of the product for accurate and efficient processing of Open and Distribute containers. In response to customer needs, the Postal Service is investigating the production of a self-adhesive Tag 190 for DDU shipments made in USPS®-supplied Flat Rate Boxes and envelopes. Customers will be notified of the new self-adhesive Tag 190 when it becomes available.

4. One internal commenter brought to our attention that under authorization, Open and Distribute containers were allowed to be presented sealed. This exception was incorporated into the final rule.

5. One commenter questioned the 70 pound weight limit. The Postal Service has determined that this is outside the scope of this final rule.

#### Summary

With the introduction of tray boxes, Label 23, once used to identify letter-size trays, is no longer needed, and the Postal Service is discontinuing its use. Customers now have the option to place their trays in either sacks or Open and Distribute tray boxes. The Open and Distribute tray boxes are provided free of charge by the Postal Service to all Open and Distribute customers and are available for both half-size and full-size trays.

The Postal Service also discontinues the optional use of facsimile Tags 190 and 161. Customers must use the USPS-supplied tags which are easy to identify.

Additionally, the Postal Service is updating the mailing standards to reflect Open and Distribute containers must not exceed the 70-pound weight limit and that PS Form 3152, *Confirmation Services Certification*, must be submitted with each mailing. The Postal Service also updates the mailing standards to clarify that Open and

Distribute containers must be presented unsealed, unless accepted under an alternate procedure authorized by Business Mailer Support.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

#### PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

\* \* \* \* \*

#### 700 Special Standards

\* \* \* \* \*

#### 705 Advanced Preparation and Special Postage Payment Systems

\* \* \* \* \*

#### 16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

##### 16.1 Prices and Fees

##### 16.1.1 Basis of Price

[Add new second sentence to 16.1.1 to clarify the maximum weight as follows:]

\* \* \* The maximum weight for each container is 70 pounds. \* \* \*

\* \* \* \* \*

##### 16.1.5 Payment Method

[Revise the third sentence of 16.1.5 to eliminate Label 23 as follows:]

\* \* \* Priority Mail postage must be affixed to or hand-stamped on green Tag 161, pink Tag 190, to the Open and Distribute tray box, or be part of the address label.

\* \* \* \* \*

#### 16.5 Preparation

##### 16.5.1 Containers for Expedited Transport

Acceptable containers for expedited transport are as follows:

\* \* \* \* \*