

subject line "Comment—Kauai Security Zone."

(3) *Fax*: (808) 541-2101.

All comments will be reviewed as they are received. Additionally, all comments submitted will ultimately be available for viewing on the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Sean Fahey, U.S. Coast Guard District 14 at (808) 541-2106.

**Request for Additional Comments**

On October 3, 2007, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Nawiliwili Harbor, Kauai, Hawaii" in the **Federal Register** (72 FR 56308). The comment period for the NPRM was originally set to expire on October 24, 2007. Although we received many comments on the subject rule, a few people wishing to submit comments expressed difficulty using the Federal eRulemaking Portal, one of the four methods available to submit comments on the NPRM. Recently, the Coast Guard migrated its online rulemaking docket from the Docket Management System (DMS) to the Federal Docket Management System (FMS) (72 FR 54315, Sept. 24, 2007), and this migration was accompanied by transition difficulties and delays in comments being posted on FDMS. So we will continue to accept comments on the propose rule until November 20, 2007. Comments may be submitted in one of the three methods listed in the **ADDRESSES** section of this rule. Based on the comments we receive, we may change the rule.

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please identify the docket number for this rulemaking (USCG-2007-29354), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed

postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Temporary Final Rule**

Concurrent with this notice to extend the comment period, the Coast Guard is also publishing a temporary final rule for a security zone in Nawiliwili Harbor. That temporary final rule can be found elsewhere in this issue of the **Federal Register**. The temporary final rule is being issued on an emergency basis to ensure that there is a security zone in place after the current security zone (72 FR 50877, September 5, 2007) expires on October 31, 2007. That temporary final rule is of limited duration—it will be in effect from November 1, 2007, through November 30, 2007—and is necessary to ensure the safety and security of water-based and land-based obstructions, as well as the passengers and crew of the Superferry, should the Superferry transit through Nawiliwili Harbor.

**Public Meeting**

During this extended comment period, you may also submit a request for a public meeting. Based on the comments we receive, we may choose to hold a public meeting. You may submit a request for a public meeting to Lieutenant Sean Fahey at U.S. Coast Guard District 14, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, explaining why one would be beneficial. The deadline for submitting requests is November 20, 2007.

If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Dated: October 24, 2007.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

[FR Doc. 07-5412 Filed 10-26-07; 2:34 pm]

**BILLING CODE 4910-15-P**

**LIBRARY OF CONGRESS**

**Copyright Royalty Board**

**37 CFR Part 382**

[Docket No. 2006-1 CRB DSTRA]

**Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the use of sound recordings by preexisting subscription services for the period January 1, 2008, through December 31, 2012.

**DATES:** Comments and objections, if any, are due no later than November 30, 2007.

**ADDRESSES:** Comments and objections may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting subscription services, to make digital transmissions of a sound recording under a compulsory license, provided the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may

make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 260. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (“Judges”). 17 U.S.C. 801(b)(1). The current rates applicable to preexisting subscription services expire on December 31, 2007.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of the proceeding to determine rates and terms of royalty payments under sections 114 and 112 for the activities of preexisting subscription services<sup>1</sup> and requesting interested parties to submit their petitions to participate. 71 FR 1455 (January 9, 2006). Petitions to participate in the proceeding to set these rates and terms were received from SoundExchange, Inc. and Music Choice.

The Judges set the schedule for the proceeding, including the dates for the filing of written direct statements as well as the dates for oral testimony. Subsequent to the filing of their written direct statements, but prior to the oral presentation of witnesses, SoundExchange and Music Choice informed the Judges that they had “reached a settlement of all issues between them in this proceeding, including the rates and terms for the statutory license applicable to preexisting subscription services” under sections 114 and 112 of the Copyright Act for the period from January 1, 2008, through December 31, 2012. Notice of Settlement at 1 (filed June 12, 2007). They also stated that the settlement agreement would be submitted to the Judges “for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A).” *Id.* at 2. The settlement agreement,

including the proposed rates and terms, was filed on October 19, 2007.

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). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and preexisting subscription services performing the sound recordings for the license period 2008–2012.

As part of this notice of proposed rulemaking, the Copyright Royalty Judges are modifying two aspects of the proposed rates and terms. First, the submitted proposal placed the rates and terms in part 260, which is in Chapter II of 37 CFR. Chapter II contains the regulations of the Copyright Office, not the Copyright Royalty Board. Therefore, we are changing the numbering of the proposed regulations to reflect their proper location in Chapter III of 37 CFR.

Second, proposed §§ 260.5(c) and 260.6(c) (now 382.5(c) and 382.6(c), respectively) require that interested parties intending to conduct an audit of a service or of the entity making the royalty payment, respectively, file with the Copyright Office a notice of intent to audit. We are changing these provisions to require that such notices of intent to audit be filed with the Copyright Royalty Board rather than the Copyright Office.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this notice of proposed rulemaking. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to

establish rates and terms for the activities of preexisting subscription services under the sections 112 and 114 licenses.

#### List of Subjects in 37 CFR Part 382

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

#### Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add part 382 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

#### PART 382—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES’ DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS

Sec.

382.1 General.

382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

382.3 Terms for making payment of royalty fees.

382.4 Confidential information and statements of account.

382.5 Verification of statements of account.

382.6 Verification of royalty payments.

382.7 Unknown copyright owners.

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

#### § 382.1 General.

(a) This part 382 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

<sup>1</sup> The Notice also commenced and requested Petitions to Participate for the proceeding to determine rates and terms for preexisting satellite digital audio radio services (“SDARS”), as required under section 804(b)(3)(B). Unlike the preexisting subscription services, the SDARS did not reach a settlement regarding rates and terms governing their activities under sections 112 and 114 and proceeded to a full hearing before the Judges. Consequently, those rates and terms will be determined by the Judges and also will be contained in proposed Part 382. Today’s notice of proposed rulemaking discusses only the preexisting subscription services.

**§ 382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.**

(a) Commencing January 1, 2008, and continuing through December 31, 2011, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2012, and continuing through December 31, 2012, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.5% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of \$100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(e)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors, if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the programming service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (e)(1)(i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (e)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

**§ 382.3 Terms for making payment of royalty fees.**

(a) *Payment to Collective.* All royalty payments shall be made to the Collective designated for the collection and distribution of royalties for the 2008–2012 time period, which shall be SoundExchange.

(b) *Timing of payment.* Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to copyright owners and performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those copyright owners, performers, or their designated agents

who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.2 of this chapter.

(2) If the Collective is unable to locate a copyright owner or performer entitled to a distribution of royalties under paragraph (c)(1) of this section within 3 years from the date of payment by a Licensee, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

**§ 382.4 Confidential information and statements of account.**

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 382.5 and 382.6.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the Collective and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees, agents, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties

during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(3) Copyright owners and performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(3) are the monthly statements of accounts that accompany royalty payments.

(e) The Collective or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the Collective or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

#### **§ 382.5 Verification of statements of account.**

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of

intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the Collective.

#### **§ 382.6 Verification of royalty payments.**

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the Collective during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve

as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

#### **§ 382.7 Unknown copyright owners.**

If the Collective is unable to identify or locate a copyright owner or performer who is entitled to receive a royalty distribution under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: October 26, 2007.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

[FR Doc. E7-21473 Filed 10-30-07; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R09-OAR-2007-0459; FRL-8487-7]

### **Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Mojave Desert Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that