

Regulation Identification Number

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List of Subjects in 23 CFR Part 630

Bonds, Government contracts, Grant programs; transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: April 25, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, as set forth below:

PART 630—[REVISED]

1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart G—Advance Construction of Federal-Aid Projects [Revised]**§ 630.705 [Amended]**

2. In § 630.705, remove paragraphs (c) and (d).

§ 630.707 [Removed and Reserved]

3. Remove and reserve § 630.707.

§ 630.711 [Removed]

4. Remove § 630.711.

[FR Doc. 03–10692 Filed 4–30–03; 8:45 am]

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LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 262**

[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription

transmissions for the 2003 and 2004 statutory licensing period, and for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, in addition to the making of ephemeral recordings necessary for the facilitation of such transmissions. The rates and terms do not pertain to the use of sound recordings in digital transmissions of simulcasts of AM and FM radio broadcast programming (including transmissions or retransmissions thereof by third parties), transmissions made by certain noncommercial entities, and small commercial webcasters who elect to operate under an agreement negotiated pursuant to the Small Webcasters Settlement Act of 2002.

DATE: Comments are due no later than June 2, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (“DPRA”), Pub. L. 104–39, which 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 right was the creation of a new compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 (“DMCA” or “the Act”), Pub. L. 105–304, to cover additional digital audio transmissions. These include “eligible nonsubscription transmissions” and those transmissions made by “new subscription services.”

For purposes of the section 114 license, 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 the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. See 17 U.S.C. 114(j)(6). A “new subscription service” is “a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service.” 17 U.S.C. 114(j)(8).

In addition to expanding the current section 114 license, the DMCA also created a new statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by eligible nonsubscription services and new subscription services.

The procedure for setting the rates and terms for these two statutory licenses is a two-step process. 17 U.S.C. 112(e)(3), (4), and (6) and 17 U.S.C. 114(f)(2). The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give interested parties an opportunity to determine the applicable rates and terms through a less formal process. However, if the parties are unable to reach an agreement during this period, sections 112(e)(4) and 114(f)(2)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel (“CARP”) for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The Library of Congress recently conducted a CARP proceeding which produced the royalty rates and terms for these licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002. See 67 FR 45239 (July 8, 2002). In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by eligible nonsubscription services, the Library published a notice initiating a six-month voluntary negotiation period to adjust the rates and terms for eligible nonsubscription services for the 2003–2004 period. See 67 FR 4472 (January 30, 2002). No settlement was reached at the end of the period. Consequently, two separate petitions were filed with the Copyright Office by the Recording Industry Association of America, Inc. (“RIAA”); and IOMedia Partners, Inc., 3WK, Digitally Imported Radio, IM Networks,