

merely codify the actual practice under the existing rules.

### Small Business Regulatory Enforcement Fairness Act

Because the rule relates to Agency procedure and practice and merely modifies the agency's existing filing procedure, the General Counsel has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

### Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

### List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

### PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). sections 102.143 through 102.155 also issued under Section 5034(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.19(a) is revised to read as follows:

#### § 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the Regional Director declines to issue a complaint or, having withdrawn a complaint pursuant to § 102.18, refuses to reissue it, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing the "Appeal Form" with the General Counsel in Washington, DC, and filing a copy of the "Appeal Form" with the Regional Director, within 14 days from the service of the notice of such refusal to issue or reissue by the Regional Director, except as a shorter period is provided by § 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The person may also file a statement setting

forth the facts and reasons upon which the appeal is based. If such a statement is timely filed, the separate "Appeal Form" need not be served. A request for extension of time to file an appeal shall be in writing and be received by the office of General Counsel, and a copy of such request filed with the Regional Director, prior to the expiration of the filing period. Copies of the acknowledgement of the filing of an appeal and of any ruling on a request for an extension of time for filing the appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the General Counsel upon good cause shown.

\* \* \* \* \*

Dated: Washington, DC, June 25, 2003.

By direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

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### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 260

[Docket No. 2001-1 CARP DSTRA2]

#### Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007.

**DATES:** *Effective Date:* August 4, 2003.

*Applicability Date:* The regulations apply to the license period January 1, 2002 through December 31, 2007.

**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. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

#### 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 to make digital transmissions of a sound recording under a compulsory license, provided that 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.

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 preexisting services, the Copyright Office published a notice in the **Federal Register** on January 9, 2001. 66 FR 1700 (January 9, 2001). This notice initiated a six-month negotiation period the purpose of which was to provide an opportunity for interested parties to set rates and terms for use of the section 114 license as it applied to both the preexisting subscription services and the preexisting satellite digital audio radio services. Unfortunately, no agreement was reached by the end of that period and petitions were filed requesting that the Librarian of Congress convene a Copyright Arbitration Royalty Panel ("CARP") to determine the rates and terms for both categories of preexisting services.

On January 17, 2003, the Copyright Office received notification of a settlement among the parties contesting rates and terms for preexisting services and a joint petition requesting the Librarian to publish their proposed rates and terms in accordance with § 251.63(b) of the CARP rules, 37 CFR, which provides that—

[i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding. 37 CFR 251.63(b).

On January 30, 2003, the Copyright Office published a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** announcing the settlement and proposing the rates and terms for preexisting services. 68 FR 4744 (January 30, 2003). The NPRM specified that—