

The Limited Waiver of 37 CFR 2.190(a) Is Hereby Extended to November 2, 2004

Please note that any trademark-related correspondence other than international applications, subsequent designations, and responses to irregularity notices that is sent to the above-identified address will not be accepted, and will be returned to the sender.

If a submission mailed to the above address pursuant to this document and to the document of November 7, 2003, is delivered by the Express Mail service of the United States Postal Service, the USPTO will deem that the date of receipt of the submission in the USPTO is the date the submission was deposited as Express Mail, provided that the submitter complies with the requirements set forth in 37 CFR 2.198.

Please note that the USPTO is not suspending those rules that require electronic filing of extensions of time to oppose and notices of opposition with the Trademark Trial and Appeal Board, namely 37 CFR 2.101(b)2 and 37 CFR 2.102(a)2.

Dated: December 18, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03-31698 Filed 12-23-03; 8:45 am]

BILLING CODE 3510-16-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2003-4 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2003. In order to ensure that claims are timely received, claimants are encouraged to file their DART claims online or by fax, utilizing the special procedures described in this document.

EFFECTIVE DATE: January 1, 2004.

ADDRESSES: Claims may be filed online through the Copyright Office Web site at <http://www.copyright.gov/carp/dart/index.html>. Submissions by facsimile should be sent to (202) 252-3423. Submissions sent by a commercial

courier must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered by a party, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 403, First and Independence Avenue, SE., Washington, DC 20540. See **SUPPLEMENTARY INFORMATION** for information about online electronic filing through the Copyright Office Web site.

FOR FURTHER INFORMATION CONTACT:

William J. Roberts, Jr., Senior Attorney, Susan Grimes, CARP Specialist, or Raphael Small, Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February¹ or if

sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.² 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as online submission or facsimile transmission.

In the year 2001, due to severe disruptions in the delivery of mail to the Office caused by threat of possible anthrax contamination, the Copyright Office waived the regulations requiring that claims bear "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and prohibiting the filing by "facsimile transmission," 37 CFR 259.5(d), for the filing of claims to the DART royalty funds for the year 2001. See 67 FR 5213 (February 5, 2002). Due to continued security measures affecting the delivery of mail, the Copyright Office waived regulations for the filing of 2002 DART claims last year as well. Certain incoming mail continues to be irradiated and all mail is diverted to an off-site location for screening, resulting in delays in its delivery to the Office. In light of these continuing delays, the Office once again is waiving §§ 259.3(b) and 259.5(d) and allowing the online and facsimile submission of DART claims to the 2003 royalty funds. Online forms are available and may be submitted via the Office's Web site. Note however, that the alternative methods set forth in this Notice apply only to the filing of DART claims for the 2003 royalties which are due by March 1, 2004, and in no way apply to other filings with the Office. Please note that as a result of the last date in February occurring on a Sunday this year, the DART claims are due on Monday, March 1, 2004, in accordance with 37 CFR 259.5(b).

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such

¹ In any year in which the last day of February falls on Saturday, Sunday, a holiday or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and

postmarked by the first business day in March, shall be considered timely filed. 37 CFR 259.5(b).

² Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

as the content of claims, remain unchanged, except as noted herein. *See* 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2003

Claims to the 2003 DART royalty funds may be submitted as follows:

a. Online Submission

In order to best ensure the timely receipt by the Copyright Office of DART claims, the Office strongly encourages claimants to file their claims online by February 29, 2004, via the Copyright Office Web site. The Office has devised online electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office Web site and may submit the forms online as provided in the instructions accompanying the forms. DART forms will be posted on the Office Web site at <http://www.copyright.gov/carp/dart/index.html>. Claimants filing a joint claim may list each of their joint claimants directly on the Office's online joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January, February and on March 1, 2004. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted online using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed online must be received by the Office no later than 11:59 p.m. E.S.T. on March 1, 2004. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims online are

strongly encouraged to send their claim no later than February 29, 2004, in order to avoid any unforeseen delays in receipt of claims by the Office.

When filing claims online, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

b. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252-3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on March 1, 2004. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

c. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after March 1, 2004. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January, February, or on March 1, 2004, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

Because of delays in the receipt of mail, claimants are urged not to use the mail as a means of filing their claims to the 2003 DART royalty funds. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner. Claims sent by mail must be addressed in

accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after March 1, 2004, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

d. Hand Delivery

Beginning December 29, 2003, the Library of Congress will no longer accept in-person, on site deliveries from non-governmental, commercial couriers or messengers. *See* 68 FR 70039 (December 16, 2003). Instead, couriers must deliver materials for staff at the Library of Congress, including claims to DART royalties, directly to the Congressional Courier Acceptance Site ("CCAS"), located on 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, e.g., a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received from CCAS which does not have a date stamp of March 1, 2004 or earlier, will be considered untimely for this filing period and rejected by the Copyright Office. Alternatively, if a party chooses to hand deliver its claim personally, it can still do so. However, it is possible that under the new system such deliveries may still be redirected to CCAS for processing. For this reason, claimants who choose to have their claims hand delivered to the Copyright Office are strongly encouraged to have their claims delivered by 4 p.m. on Friday, February 27, 2004. The Copyright Office cannot guarantee timely receipt of a hand delivered claim after this date.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2003 DART royalties. The Office is not, and indeed cannot, waive the statutory

deadline for the filing of DART claims. *See, United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by March 1, 2004.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the receipt of the mail constitutes a special circumstance which has led the Office to deviate from its usual mail processing procedures. Thus, given the delays in the receipt of mail, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed online through the Office's Web site. *See* 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after March 1, 2004. *See Locke, supra*. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed online and by facsimile transmission, the

Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: December 19, 2003.

Marybeth Peters,

Register of Copyrights.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-7601-5]

RIN 2060-AK28

Approval and Promulgation of Implementation Plans; Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action revises implementation plans concerning the Prevention of Significant Deterioration (PSD) program mandated by part C of title I of the Clean Air Act (CAA or Act). These revisions include changes to incorporate newly promulgated paragraphs in the Federal PSD rule into the Federal Implementation Plan (FIP) portion of the State plan where a State agency does not have an approved PSD State Implementation Plan (SIP) in place. Specifically, the revisions provide a category of equipment replacement activities that are not subject to Major New Source Review (NSR) requirements under the routine

maintenance, repair and replacement (RMRR) exclusion. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the NSR program, and to ensure comprehensive and consistent implementation of the Federal PSD program by State, local, and tribal agencies where EPA has determined that they have the responsibility to implement the Federal PSD program.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

ADDRESSES: *Docket.* Docket No. A-2002-04 is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW, Room B-102, Washington, DC 20460. The E-docket OAR-2002-0068 for this rulemaking is available electronically at <http://www.epa.gov/edocket>.

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela S. Long, Information Transfer and Program Integration Division (C339-03), U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0641, facsimile number (919) 541-5509, electronic mail email address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC ^a	NAICS ^b
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	32411
Industrial Inorganic Chemicals	281	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	48621, 22121
Pulp and Paper Mills	261	322110, 322121, 322122, 32213
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414

^a Standard Industrial Classification

^b North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations.

The EPA has established an official public docket for this action under E-docket OAR-2002-0068 (Legacy Docket

No. A-2002-04). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or

other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B-102, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30