

Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this document would be subsequently published in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Yakutat Airport, Yakutat, AK, and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points*, signed August 18, 2010, and effective September 15, 2010, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Yakutat, AK [Revised]

Yakutat Airport, AK
(Lat. 59°30′12″ N., long. 139°39′37″ W.)
Yakutat VORTAC
(Lat. 59°30′39″ N., 139°38′53″ W.)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N., long., 139°58′48″ W., to lat. 59°37′33″ N., long. 139°40′53″ W., then along the 7 mile radius of the Yakutat VORTAC clockwise to 59°28′54″ N., long. 139°25′35″ W., to lat. 59°20′16″ N., long. 139°10′20″ W., to lat. 59°02′49″ N. long. 139°47′45″ W., to lat. 59°30′15″ N. long. 140°36′43″ W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface with a 75-mile radius of the Yakutat VORTAC.

Issued in Anchorage, AK, April 7, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services Information Area Group.

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Parts 370 and 382

[Docket No. RM 2011–5]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are proposing to amend their regulations to provide reporting of uses of sound recordings performed by means of digital audio transmissions pursuant to statutory license for the period April 1, 2004, through December 1, 2009.

DATES: Comments are due no later than May 19, 2011.

ADDRESSES: Comments may be sent electronically to 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 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 must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. 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.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction right for sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio services, and business establishment services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things,

pay royalty fees and to report to copyright owners of sound recordings on the use of their works. Both licenses direct the Copyright Royalty Judges (“Judges”) to determine the royalty rates to be paid, 17 U.S.C. 114(f)(1)(A), (f)(2)(A) and 17 U.S.C. 112(e)(3), and to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The royalty fees collected under the section 114 and 112 licenses, as determined by the Judges,¹ are paid to a central source known as a Collective.² See 37 CFR Part 370. The purpose of the notice and recordkeeping requirement is to ensure that the royalties collected under the statutory licenses are distributed by the Collective, or other agents designated to receive royalties from the Collective, to the correct recipients. To this end, on October 13, 2009, the Judges published final regulations specifying notice and recordkeeping requirements for use of sound recordings under the section 114 and 112 licenses.³ See 74 FR 52418.

SoundExchange Petition for Rulemaking

On March 24, 2011, SoundExchange petitioned the Judges to commence a rulemaking proceeding to consider adopting regulations to authorize SoundExchange “to use proxy reporting data to distribute to copyright owners and performers certain sound recording royalties [collected by SoundExchange] for periods before 2010 that are otherwise undistributable due to licensees’ failure to provide reports of use” or their provision of “reports of use that are so deficient as to be unusable.” Petition of SoundExchange, Inc. for a Rulemaking to Authorize Use of a Proxy to Distribute Certain Pre-2010 Sound Recording Royalties at 1 and 2 (March 24, 2011) (footnotes omitted). SoundExchange states that it has “expended considerable effort” to work with licensees to bring them into compliance with their reporting obligations, *id.* at 2, and will continue its efforts to obtain reporting data for the pre-2010 period. SoundExchange asserts that despite these efforts, it is

“approaching the point at which further efforts would either be futile or unreasonably costly.” *Id.*

SoundExchange holds approximately \$28 million in royalties paid by statutory licensees under sections 114 and 112 for the period April 1, 2004, to December 31, 2009, that should be paid to copyright owners and performers. This pool represents 4.5% of the royalties SoundExchange has collected for that period. *Id.* However, these royalties are not distributable due to licensees’ failure to provide reports of use as required or their provision of unusable reports. *Id.* Consequently, SoundExchange asserts that such royalties can “reasonably” be distributed to copyright owners and performers only by use of a proxy.

In support of its request, SoundExchange points out that a proxy has been utilized once before when the lack of reports of use rendered the reasonable distribution of royalties difficult if not impossible. There, reporting data did not exist for the period October 1998 (when the statutory licenses first became available for services other than preexisting subscription services) to March 2004 (when interim recordkeeping regulations were promulgated).⁴ In order to allow for the distribution of those royalties, the reports of use submitted by preexisting subscription services for the October 1998 to March 2004 timeframe were used as a proxy for all other services operating under the section 114 and section 112 licenses, thereby negating the need for submission of additional reports of use by nonsubscription services, satellite digital audio radio services, new subscription services or business establishment services. See *Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Docket No. RM 2002-1G, Final rule*, 69 FR 58261 (September 30, 2004). The Copyright Office stated that use of such proxy data was not a perfect solution in that context but was the “optimal method to ensure that royalties collected for the [October 1998 to March 2004 timeframe] [were] equitably distributed * * * with minimal delay, cost, and effort.” 69 FR 42009 (September 30, 2004).

SoundExchange contends that a similar approach is warranted now. Namely, SoundExchange states that it has “reduced the pool of

[undistributable] royalties * * * due to missing reports of use to a point such that in the near future ‘[t]he likelihood of obtaining any useful and meaningful data’ from non-reporting services would be ‘small.’” SoundExchange Petition at 3. Consequently, SoundExchange proposes using proxy reports of use. Specifically, SoundExchange seeks to use “available data for services of the same license type, for the same year,” which SoundExchange believes should result in a “much more accurate distribution” than the distribution for the October 1998 to March 2004 period. *Id.* at 9 (emphasis in original). For example, for business establishment services which fail to submit reports of use as required under the applicable regulations, SoundExchange would use reports of use submitted by other business establishment services for the same calendar year and distribute royalties from non-submitting services in proportion to the distribution of royalties from submitting services. *Id.*

SoundExchange also proposes technical corrections to part 382 to reflect the renumbering of certain sections in Part 370 when the Judges adopted their final notice and recordkeeping regulations in October 2009.

Solicitation of Comments on the Proposed Regulations

The Judges seek comment from interested parties on SoundExchange’s proposal regarding the use of a proxy for the distribution of royalties collected under the section 114 and 112 licenses for the period April 1, 2004, through December 31, 2009. In addition to general comments regarding the proposal, the Judges seek comments on the following areas:

1. Has SoundExchange exhausted all reasonable means to ensure that all undistributed royalties for the period from April 1, 2004, through December 31, 2009, have been distributed to the party that earned those royalties? If not, what other means could SoundExchange use to facilitate further distributions without resorting to proxy reports of use?

2. Assuming that SoundExchange has exhausted all reasonable means of distributing royalties to the parties who earned them, is the proposed use of proxy reports a fair and appropriate means of distributing remaining royalties for this period? If not, what would be a better alternative?

3. SoundExchange proposes using proxy reports of use based on available data for services of the same type, for the same year. Where no such proxy reports are available for the same type of service for the same year, is a default proxy based on an aggregate of the reports of other services covered by the license a fair and appropriate means of

¹ To date, the Judges have determined royalty rates for the license periods 2006–2010 and 2011–2015. See 72 FR 24084 (May 1, 2007) and 76 FR 13026 (March 9, 2011).

² SoundExchange, Inc., originally created by the Recording Industry Association of America, Inc., is currently the Collective for receiving both section 112 and 114 royalties, and it (and its predecessor) has been the Collective since the inception of the two licenses.

³ Until that time, interim regulations were in effect. See 71 FR 59010 (October 6, 2006).

⁴ Prior to May 31, 2005, the statutory licenses were administered by the Copyright Office under the Copyright Arbitration Royalty Panel (“CARP”) system. The Copyright Royalty Distribution Reform Act of 2004 replaced the CARP system with the Copyright Royalty Judges.

distributing royalties for this period. If not, what would be a better alternative?

4. Is the disaggregation by type of service proposed in § 370.4(f) (i.e., nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service, or business establishment service) sufficient to determine a reasonable proxy for generating corresponding reports of use for similar types of non-reporting services?

Is further disaggregation of some service types, as currently referenced in 37 CFR Part 380 (e.g., disaggregation of nonsubscription transmission services into commercial webcasters, noncommercial webcasters, broadcasters, or noncommercial educational webcasters) desirable to determine a better proxy for generating corresponding reports of use for such non-reporting services? Would this type of further disaggregation be practicable? Would the benefits yielded by such further disaggregation, if any, justify the incremental costs of doing so?

5. Does the proposed regulatory language in §§ 370.3(i) and 370.4(f) (i.e., “* * * service has not provided a report of use required under this section * * *”) clearly encompass both the failure of a service to provide reports of use as well as instances where the service files an unusable report of use?

SoundExchange’s petition is posted on the Copyright Royalty Board Web site at <http://www.loc.gov/crb/3-24-11-SoundExchange-petition-proxy.pdf>.

List of Subjects

37 CFR Part 370

Copyright, Sound recordings.

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 amending 37 CFR parts 370 and 382 as follows:

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

1. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

2. Section 370.3 is amended by adding new paragraph (i) to read as follows:

§ 370.3 Reports of use of sound recordings under statutory license for preexisting subscription services.

(i) In any case in which a preexisting subscription service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior

to January 1, 2010, reports of use for the corresponding calendar year filed by other preexisting subscription services shall serve as the reports of use for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

3. Section 370.4 is amended by adding new paragraph (f) to read as follows:

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

* * * * *

(f) In any case in which a nonsubscription transmission service, preexisting satellite digital audio radio service, new subscription service, or business establishment service has not provided a report of use required under this section for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, prior to January 1, 2010, reports of use for the corresponding calendar year filed by other services of the same type shall serve as the reports of use for the non-reporting service, solely for purposes of distribution of any corresponding royalties by the Collective.

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

4. The authority citation of part 382 continues to read as follows:

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

§ 382.3 [Amended]

5. Section 382.3(c)(1) is amended by removing “§ 370.2” and adding “§ 370.3” in its place.

§ 382.13 [Amended]

6. Section 382.13(f)(1) is amended by removing “§ 370.3” and adding “§ 370.4” in its place.

Dated: April 14, 2011.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1037; FRL–9297–4]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 PM_{2.5} and 8-Hour Ozone NAAQS: “Significant Contribution,” “Interference with Maintenance,” and “Interference with Prevention of Significant Deterioration” Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of addressing the “good neighbor” provisions of Clean Air Act (“Act” or “CAA”) section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (“NAAQS” or “standards”) and the 1997 fine particulate matter (“PM_{2.5}”) NAAQS. This SIP revision addresses the requirement that the State of Colorado’s SIP (“Interstate Transport SIP”) have adequate provisions to prohibit air emissions from adversely affecting another state’s air quality through interstate transport. In this action, EPA is proposing to approve the Colorado Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Colorado sources do not significantly contribute to nonattainment of the 1997 PM_{2.5} NAAQS in any other state, interfere with maintenance of the 1997 PM_{2.5} NAAQS by any other state, or interfere with any other state’s required measures to prevent significant deterioration of air quality for the 1997 PM_{2.5} and 8-hour ozone NAAQS. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before May 19, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1037, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* clark.adam@epa.gov.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Deborah Lebow Aal, Acting Director, Air Program, Environmental