procedures for the administration of the TRICARE Retiree Dental Program.

Dated: June 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–16406 Filed 6–23–97; 8:45 am]

BILLING CODE 5000–04–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Chapter II

[Docket No. RM 96–3A]

Notice and Recordkeeping for Subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting further comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works from subscription digital transmission services, and how records of such use shall be kept and made available to copyright owners. The Digital Performance Right in Sound Recordings Act of 1995 requires the Office to adopt the regulations. The Office is requesting this additional comment before issuing interim regulations.

DATES: Comments must be submitted on or before August 25, 1997.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: Nanette Petruzzelli, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995. Public Law No. 104–39, 109 Stat. 336 (1995). The law gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). Certain digital transmissions were exempted from the scope of the right, 17 U.S.C. 114(d)(1), while nonexempt digital subscription services were given the opportunity to qualify for a statutory license. 17 U.S.C. 114(d)(2).

Congress directed the Librarian of Congress to establish regulations under which copyright owners may receive reasonable notice of the use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2).

The Sec. 114 License for Nonexempt Subscription Transmissions

A nonexempt digital subscription service transmission is subject to statutory licensing in accordance with 17 U.S.C. 114(f) if the transmission is not part of an interactive service, does not exceed the ''sound recording performance complement,'' does not give an advance program schedule or prior announcement of titles to be performed, does not automatically cause the receiving device to switch from one program channel to another, and includes information encoded by authority of the copyright owner identifying the title, the featured artist, and related information. 17 U.S.C. 114(d)(2). The ''sound recording performance complement'' is defined as:

> the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—
>
> (A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or
>
> (B) 4 different selections of sound recordings—
>
> (i) by the same featured recording artist; or
>
> (ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States, if no more than three such selections are transmitted consecutively: *Provided,* That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

17 U.S.C. 114(j)(7).

Digital subscription transmission services that qualify for the statutory license may reach a voluntary agreement as to rates and terms with sound recording copyright owners, or may petition the Librarian of Congress to convene a copyright arbitration royalty panel (CARP) to set rates and terms for those entities that have not reached voluntary agreement. 17 U.S.C. 114(f). On June 4, 1996, no voluntary agreement having been reached, the parties petitioned the Librarian to convene such a CARP. Rates and terms set by the CARP will apply to all subscription services not subject to voluntary agreement. 17 U.S.C. 114(f)(2)–(3). However, Congress also directed the Librarian of Congress to establish regulations by which copyright owners may receive reasonable notice of the use of their sound recordings under statutory license, and under which records of such use shall be kept and made available by the entities performing the sound recordings. 17 U.S.C. 114(f)(2). Anyone performing a sound recording publicly by means of a nonexempt subscription transmission under section 114(f) may do so without infringing the exclusive right of the sound recording copyright owner by complying with the notice requirements that the Librarian prescribes by regulation and by paying royalty fees in accordance with the law. 17 U.S.C. 114(f)(5).

Rulemaking on Notice and Recordkeeping

On May 13, 1996, the Copyright Office published a Notice of Proposed Rulemaking in the **Federal Register** requesting comments on the requirements by which copyright owners should receive reasonable notice of the use of their works from subscription digital transmission services and how records of such use should be kept and made available to copyright owners. The Office asked commentators to consider both the adequacy of the notice to sound recording copyright owners and the administrative burdens placed on the digital transmission services in providing notice and maintaining records of use. 61 FR 22004 (May 13, 1996).

The Office received a total of four comments and three reply comments, as well as one surreply and one comment to the surreply. Comments were submitted by the Recording Industry Association of America (RIAA); DMX, Inc. (DMX); Muzak; and Digital Cable Radio Associates/Music Choice (DCR) (''commenting parties''). The comments set forth a wide range of proposals for notice and records of use, with varying form and content requirements. The comments also included proposals concerning matters not addressed in the

Act, such as confidentiality and auditing.

On Thursday, November 14, 1996, the Copyright Office met with the parties to facilitate agreement on notice and recordkeeping requirements for digital subscription services under 17 U.S.C. 114, and to discuss the proper regulatory and recordkeeping role for the Office. *See* Memorandum from Marilyn J. Kretsinger, Acting General Counsel, U.S. Copyright Office, to Commenting Parties (Oct. 9, 1996). In attendance were 15 individuals representing RIAA, DMX, Muzak, DCR, and the Copyright Office. Further written comments were submitted in response to a draft meeting summary distributed to participants by the Copyright Office. A second meeting took place on Thursday, January 23, 1997. *See* Memorandum from Marilyn J. Kretsinger, Acting General Counsel, U.S. Copyright Office, to Commenting Parties (Jan. 14, 1997). A summary of the written comments and meeting discussions will be included with the published interim regulations.[1]

In this Notice of Inquiry, the Copyright Office requests further written comment from interested parties relating to quarterly reports of use to be provided by digital subscription services, before proceeding to issue interim regulations under section 114. The regulations will be issued on an interim basis due to the developing nature of the technology to be employed in accommodating the reporting requirements.

Policy Issues Relating to Quarterly Reports of Use Identified in Discussions Among the Commenting Parties

The comments and the discussions among the commenting parties raised the following issues relating to the quarterly reports of use.

1. Reporting Compliance With the Sound Recording Performance Complement

In addition to an initial notice to be filed, with an accompanying filing fee, with the U.S. Copyright Office, the commenting parties proposed generally that subscription services file quarterly reports of use including data to indicate which sound recordings were performed and the number of times (summary frequency data). In addition to the summary frequency data, sound recording copyright owners proposed that each quarterly report include a sample of the service's playlist, to permit copyright owners: (1) To verify the accuracy of the summary frequency data; and (2) to monitor compliance with the sound recording performance complement defined in 17 U.S.C. 114(j)(7). Under one proposal, the sample would have consisted of a 30-day report each quarter of either: (1) The service's actual playlist; or (2) its intended playlist with an error log and an accompanying certification of the information's accuracy by a service official. *See* RIAA Additional Reply (Dec. 19, 1996) at 7.

In response, representatives of subscription services raised two issues: (1) Whether the Act requires them to affirmatively report compliance with the performance complement at all; and (2) if so, whether a sample size could be developed with a true mathematical or statistical basis. *See* DCR Additional Comment (Dec. 12, 1996) at 4–6; Letter from Jon L. Praed to Jean R. Milbauer (Jan. 16, 1997). At the January 23 meeting, RIAA indicated that it would attempt to determine an appropriate sample size if the services were to provide appropriate data. On February 11, the Copyright Office encouraged the services to address RIAA's request for such data. Memorandum from Nanette Petruzzelli, Acting General Counsel, U.S. Copyright Office, to Commenting Parties (Feb. 11, 1997).

On March 11, 1997, after consulting with the other commenting services, a representative for DMX proposed that the services simply produce their entire intended playlist for each quarter instead of providing summary frequency data or error logs, to enable copyright owners to determine allocation of royalties and compliance with the performance complement. Letter from Seth D. Greenstein, Esq., to Jean R. Milbauer, Esq. (Mar. 11, 1997). This proposal was deemed generally acceptable to the commenting parties provided that an agreeable definition for ''intended playlist'' were reached. *See* Letter from Jean R. Milbauer to Commenting Services (Mar. 13, 1997); Letter from Seth D. Greenstein to Jean Milbauer, Esq. (Mar. 18, 1997); Letter from Fernando R. Laguarda, Esq., to Jean R. Milbauer, Esq. (Mar. 18, 1997) (''without waiving any legal objections previously set forth'').

2. Data Fields

The commenting parties are also attempting to negotiate agreement on data fields to be provided in the reports of use that will permit identification of sound recordings performed and distribution of royalties to individual copyright owners, without placing unreasonable burden on subscription services. *See, e.g.*, DCR Additional Comment (Dec. 12, 1996) at 4 n.7; RIAA Additional Reply (Dec. 19, 1996) at 2 n.1; Letter from Seth D. Greenstein, Esq., to Jean Milbauer, Esq. (Mar. 18, 1997).

3. Non-Collective Member Copyright Owners

Finally, issues exist concerning how the reports of use will be kept or made available for sound recording copyright owners who are not members of a collective, who cannot be located, or who refuse delivery. RIAA has created a collective to collect and distribute its members' sound recording performance royalties. Owners of copyright in an estimated 90 percent of all sound recordings sold in the United States are members of the RIAA trade association and will likely designate the RIAA collective as their agent or representative; in those cases, digital subscription services would file quarterly reports (and any royalty payments and accounting information) with the RIAA collective. Services, however, may not be able to employ the statutory license in this manner for an estimated ten percent of all sound recordings sold in the United States. Sound recording copyright owners that are not members of the RIAA trade association may not be permitted by RIAA to designate its collective as their agent to receive reports and royalties. *See* RIAA Additional Reply (Dec. 19, 1996) at 9–10; DCR Additional Comment (Dec. 12, 1996) at 7. Some copyright owners may choose not to designate the RIAA collective. *See* 17 U.S.C. 114(e)(1) (permitting designation of common agents on nonexclusive basis). The location or identity of other sound recording copyright owners may be unknown.

Copyright Office Preliminary Determinations and Additional Policy Questions

Based on the comments and discussions among the parties, which will be addressed more fully in the Office's interim regulations, the Copyright Office has reached certain preliminary decisions and identified certain additional policy questions.

The Office will accept an optional initial notice which may be filed by digital transmission services indicating commencement of transmission of sound recordings under the section 114 statutory license. This initial notice, to consist simply of the service name, address, and contact person, will be placed in Copyright Office records, where copyright owners may obtain access to this information concerning the use of sound recordings under

[1] The comments and meeting summaries are available in the Public Information Office of the Copyright Office, Room LM–401, James Madison Memorial Building, Washington, D.C.

statutory license. Section 114(f)(2), however, requires that copyright owners will receive notice of the use of their sound recordings; a notice indicating commencement of transmission under statutory license does not accomplish that objective, and therefore the regulation will not require services to file such a notice. As discussed below, copyright owners will most appropriately and reasonably receive notice of the use of their sound recordings, and records of such use, by direct service. The contents of the initial notice, and the appropriate filing fee, will be discussed more specifically in the Office's interim regulations.

The Office has concluded that the Digital Performance Right in Sound Recordings Act of 1995 contemplates that digital subscription services will keep and make available, not simply summary frequency data, but records of use that will enable sound recording copyright owners to generally monitor the services' compliance with the sound recording performance complement. *See* 17 U.S.C. 114(d)(2); 114(f)(5); 114(j)(7). The Office has determined that establishing such a requirement is within its rulemaking authority under 17 U.S.C. 114(f)(2).

The Office has also determined that sound recording copyright owners whose identity and location is known should be served directly, or directly via their designated agent, with the quarterly reports of use of their copyrighted works under the statutory license. The Office will not accept for filing any quarterly reports of use. The Office recognizes the potential burden for services of identifying and serving individual copyright owners who are not members of a collective such as RIAA's. *See* DMX Comment at 2, 8; Muzak Comment at 2; DCR Reply at 5–6. The Office understands the possible disincentive that individual reporting could create for performance of recordings owned by small or independent record labels. *See* DMX Reply at 3. However, the regulations must establish how records of use shall be kept and made available, and the Office is unable to designate a particular entity as a central records repository or as a collective agent. *See* 17 U.S.C. 114(e)(1).

In order to determine the appropriate regulatory structure of any reporting requirements, the Office has examined analogous statutory, regulatory, and industry precedent involving collective or compulsory licensing of performance and reproduction rights in musical works.

With their multiple channels and round-the-clock transmission, digital services in some respects resemble traditional radio broadcasters, who provide reports to three collective performing rights societies (that, in turn, monitor hours of radio play). Practically speaking, owners of copyright in musical works generally authorize one of these collective rights societies to license public performances in order to be compensated and receive records of use.

On the other hand, under the section 115 license and its accompanying regulations, by which record companies and others make and distribute phonorecords of nondramatic musical works, compulsory licensees must serve the copyright owner or its agent directly with notice, and with monthly and annual statements of account (which include records of distribution). *See* 17 U.S.C. 115(b)(1); 17 U.S.C. 115(c) (4)–(5); 37 CFR 201.18(e)(2); 37 CFR 201.19 (e)(7)(i), (f)(7). The requirement of actual notice, however, attaches only if the registration or other public records of the Copyright Office identify the copyright owner and include an address at which notice can be served; otherwise, it is sufficient to file the notice in the Copyright Office. 17 U.S.C. 115(b)(1); 37 CFR 201.18(e)(1).[2] If the notice is sent to the last address shown for the copyright owner in Copyright Office records, and is returned because the copyright owner is no longer there or has refused delivery, the licensee shall file the notice with the Copyright Office, along with evidence that it was sent by certified or registered mail to that address, and a brief statement that the notice was sent to the last address shown in Copyright Office records but was returned. 37 CFR 201.18(e)(3). Where an address for the copyright owner is not known, or the copyright owner has refused delivery, licensees may file their monthly and annual statements of account with the Copyright Office Licensing Division, along with any evidence of certified or registered mailing. 37 CFR 201.19 (e)(7)(ii)(A), (f)(7)(iii)(A).[3] Any monthly or annual statement of account so filed with the Office must be accompanied by a brief statement of why the statement was not served on the copyright owner. 37 CFR 201.19 (e)(7)(ii)(A), (f)(7)(iii)(A). As a matter of business practice, some compulsory licensees may also create an escrow account to set aside royalties at the statutory rate for a certain time period.

At the initial meeting of the commenting parties, there was some discussion of an escrow account or trust fund for section 114 royalty payments for copyright owners who are unknown or cannot be located. *See* Summary of Nov. 14 Meeting 1 (Jan. 2, 1997). The Office has no authority to require services to set aside section 114 royalties; just as some record companies may escrow royalties for unknown publishers under section 115, services may decide for business and legal reasons to escrow section 114 royalties. Because, however, the Office has concluded that it will not receive reports of use under the section 114 license and cannot designate a particular entity as a central collective or records repository, the Office sees no alternative to requiring subscription services that perform sound recordings under the section 114 license to serve the sound recording copyright owner whose identity and location is known, or its designated agent, directly with reports of use.

The Office is therefore requesting comment on how digital services will identify and locate sound recording copyright owners whose sound recordings are performed, and how the regulation should define a sound recording copyright owner ''whose identity and location is known'' so as to trigger the requirement of direct service. Only copyright owners whose location or identity is unknown, or who refuse delivery, will not be directly served.

1. Reports of Use for Unknown Copyright Owners

In the event that an address for a copyright owner is not known, or the copyright owner has refused delivery, no additional filing will be required at the Copyright Office. All digital services may file an initial notice with the Office indicating their commencement of transmission. All services will be required to maintain their records of use (i.e., either the reports of use, or the information underlying the reports of use) for a period of three years, the statutory limitation for copyright infringement actions. As a matter of business practice, services are strongly urged to maintain any evidence of mailing and a brief statement as to why the reports of use were not served on the copyright owner. While recognizing burdens associated with retention of such records, the Office believes it is in the services' interests to do so. Services may wish to consider designating a collective agent to maintain their reports

[2] To be entitled to receive royalties under compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. 17 U.S.C. 115(c)(1).

[3] The regulations specify that the filing, or failure to file, a monthly or annual statement of account with the Office has no effect ''other than that which may be attributed to it by a court.'' 37 CFR 201.19 (e)(7)(ii)(C), (f)(7)(iii)(C).

of use for the three year period, and in any event must establish reasonable access procedures and conditions.

Copyright owners who wish to contact digital services may do so directly or through their designated representatives. The Office envisions that owners of copyright in sound recordings performed under the section 114 license who have not been directly served, but who make their identity and location known at some point in time, should have access to records of use of their works for the preceding three years, and should thereafter be served directly with reports relating to subsequent performances. The Office therefore inquires how services propose to make records of use reasonably available and accessible, and how copyright owners whose works are performed but who have not been directly served should make their identity and location known. Subscription services may want to comment on how such copyright owners might identify their sound recordings, and how a regulation might delineate boundaries within which such copyright owners may demand access to records of use.

2. Audit of Records of Use

A related, although not identical, question concerns the auditing of the digital services' records of use by copyright owners in general. During discussions, the commenting parties agreed that any rules governing audits of accounting records were best handled under section 114(f)(2) as a matter of rates and terms, to be addressed and resolved through CARP or negotiation. However, in order to ensure access to records of use and limit the potential for multiple audits, some parties proposed a regulation that would permit audits of the information underlying the reports of use, but would limit copyright owners to a single such audit per year; such procedure would be initiated by a notice of intent to audit, filed with the Copyright Office and published in the **Federal Register**, with a comment period for all interested parties to agree on choice of auditor. *See* DMX Comment at 12–13; RIAA Reply at 14–16, 18. The Office is assuming that the decision to provide the intended playlists in the quarterly reports largely obviates the need for an audit regulation, and in any event is inclined to see the practice of auditing as a business and legal decision. The Office will issue no regulation, therefore, concerning audit of the information underlying the reports of use.

3. Confidentiality of Records and Data Separation

Finally, the Office recognizes confidentiality concerns that services have expressed in relation to serving playlist information and programming details upon sound recording copyright owners. *See* Muzak Comment at 2–3. Precautions that may be implemented at a large collective to protect the information's confidentiality may be difficult to duplicate by dozens of smaller recipients. Yet the Office also recognizes that the commenting services' desire to avoid burdensome data separation and the production of different data in different formats for different copyright owner entities was a primary motivator for the proposal ''simply to produce the entire intended playlist for each quarter,'' subject to appropriate confidentiality provisions. *See* Letter from Seth D. Greenstein, Esq., to Jean Milbauer, Esq. (Mar. 11, 1997). Even if a software program can be developed to separate and extract names of copyright owners who are, or are not, members of a particular collective, there may eventually be multiple collectives. On the other hand, because royalties must be paid to small and individual copyright owners whose works are performed, the Office recognizes that services will necessarily generate some data to determine those royalties, and undertake some separation of copyright owner names, sound recording identifiers, and frequency of performances. The Office inquires whether services plan to provide their intended playlists for each quarter to small and individual sound recording copyright owners (as well as to a major collective such as the RIAA's) and, if not, whether the services can propose an alternative reporting mechanism that would indicate which sound recordings were performed and the number of times (summary frequency data), and permit sound recording copyright owners to monitor compliance with the sound recording performance complement (perhaps through date and time information). The Office requests comment as to whether services will extract the names of individual copyright owners, or members of various collectives, in order to provide such individuals or entities with separate royalties or reports, and whether this would provide a means for an alternative reporting mechanism. The Office inquires whether copyright owners should be required to sign and return a confidentiality agreement before receiving reports consisting of playlist information, and whether the regulation should permit copyright owners to waive service of reports including performance complement information in order to receive simply the summary frequency data pertaining to the use of their sound recordings only. We also seek comment on the estimated costs for providing intended playlists to different parties, and on who should bear the costs of serving, maintaining, and accessing such records of use.

The Office is providing a 60-day comment period with this inquiry to permit the parties to conduct any discussions and reach agreement on any outstanding issues; there will be no reply period. We would particularly appreciate comment from sound recording copyright owners not represented by RIAA, and are aware of at least one such entity that has requested records of use from DMX. *See* Letter from Seth D. Greenstein, Esq., to Jean Milbauer, Esq. (Mar. 11, 1997).

Questions for Comment

The Office requests public comment on the following questions relating to the quarterly reports of use to be provided by digital subscription services:

(1) The Office has determined that digital subscription services should provide records of use that will indicate which sound recordings were performed and the number of times, and that will enable sound recording copyright owners to monitor compliance with the sound recording performance complement defined in 17 U.S.C. 114(j)(7). Should a service provide its intended playlist as the vehicle for such reporting? Is an alternative reporting mechanism available?

(2) What should be the definition of ''intended playlist''? Would a service provide its intended playlist for each day, and each channel, at the close of each quarter? How long after the close of each quarter should the report be due? If the intended playlist is made available, would error logs also be required in the event of a system malfunction?

(3) Should the reports of use bear a certification by a service representative, and, if so, why? What would be the content of such a certification?

(4) The Office has determined that sound recording copyright owners whose identity and location is known should be served directly, or directly via their designated agent, with quarterly reports of use of their copyrighted works under the statutory license. In serving small and individual sound recording copyright owners, who are not members of a major collective such as RIAA's, will services provide their intended

playlists or can they propose an alternative reporting requirement that would indicate which sound recordings were performed and the number of times (summary frequency data) and permit monitoring of the performance complement? What costs are involved in providing the intended playlist to different parties? Who should bear the costs of serving, maintaining, or accessing these records of use?

(5) Does provision of the intended playlist raise confidentiality problems? If so, what measures can a service or copyright owner take to protect its confidentiality? Should there be any express restrictions on the use of this information and, if so, what restrictions? If in fact the information is confidential or trade secret, and no satisfactory alternative reporting requirement can be devised, should the copyright owner be required to sign and return a confidentiality agreement before receiving reports of use consisting of playlist information? Should the regulation permit the copyright owner to waive service of information relating to the performance complement in order to receive simply the summary frequency data pertaining to the use of their sound recordings only?

(6) How do digital subscription services plan to identify and locate copyright owners of sound recordings they perform under statutory license? Beyond identification in the Copyright Office registration records, how should the regulations define a sound recording copyright owner ''whose identity and location is known'' for the purpose of triggering the requirement of direct service? How will services identify and locate foreign sound recording copyright owners?

(7) How do services anticipate that they will separate the names of members of various collectives, or of independent copyright owners, in order to provide such individuals or entities with separate reports? Given that services must pay royalties to small and individual copyright owners whose works are performed, what data will services generate to determine those royalties, and what separation of copyright owner names, sound recording identifiers, and performance frequency will they necessarily undertake? Could the data generated for royalty calculation and distribution be made available in reports of use, as an alternative to the intended playlists, in a way that would permit copyright owners to generally monitor the performance complement?

(8) How should copyright owners who have not been directly served make their identity and location known to digital services? How might these copyright owners identify their sound recordings for digital services?

(9) Should services retain their reports of use for three years, or is there information underlying the reports of use (such as summary frequency data, and date and time information) that might be more easily kept and made available? How do services plan to make records of use for a three year period reasonably available and accessible for copyright owners who have not been directly served? Are regulations concerning access for such individuals and entities needed?

(10) What data fields and sound recording identifiers are available, and which of these should be included in the quarterly reports of use? Will the date and time of the performance be identified and, if so, how? With respect to compilation albums, what data fields should be included in the reports of use? If there are any particular sound recording identifiers or data fields that should not be required, or that should not be required during the interim regulatory period, state which fields, and why.

(11) Should the regulations address the reporting of non-music and foreign programming? How would such programming be defined? What notice and recordkeeping requirements would apply to such programming?

(12) Should the Office expressly recognize a transition period before services must provide reports conforming completely to the regulations? If so, what should be the transition period, and what is the minimum information that should be required?

Dated: June 18, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–16553 Filed 6–23–97; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL–5845–2]

Acid Rain Program: Early Reduction Credits

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, (the Act) authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program in order to reduce the adverse health and ecological impacts of acidic deposition. On March 23, 1993, the Agency promulgated final rules allocating allowances to utility units, including the criteria and method of allocating early reduction credits under section 404(e) of the Act. This action implements a settlement of litigation between EPA and a utility regarding Phase II early reduction credits. The settlement provides a method by which additional allowances may be loaned to units receiving early reduction credits as an incentive to further reduce emissions prior to the units becoming subject to the applicable Acid Rain Program emission limitations.

The revisions of the early reduction credit program proposed today are also being issued as a direct final rule because the Agency views the revisions as noncontroversial and anticipates no adverse comments. The detailed rationale for the revisions, and the revised rule provisions, are set forth in the preamble of the direct final rule. If no significant, adverse comments are timely received (see **DATES** section), no further action will be taken on this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments on the regulations proposed by this action must be received on or before July 24, 1997, unless a hearing is requested by July 7, 1997. If a hearing is requested, written comments must be received by August 8, 1997.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than July 7, 1997. If a hearing is held it will take place July 8, 1997, beginning at 10:00 am.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–97–31) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA Headquarters Auditorium, 401 M Street, SW, Washington, DC. Persons interested in attending the hearing or wishing to present oral testimony should notify Kathy Barylski, telephone 202–233–9074, in advance.

Docket. Docket No. A–97–31, containing supporting information used to develop the proposal, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at