

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-171386-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-171386-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Taxpayers also may submit comments electronically to the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-171386-03 or RIN 1545-BD16).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments or requesting a hearing, LaNita Van Dyke, (202) 622-7180; concerning the proposed regulations, Amy Pfalzgraf, (202) 622-4950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 163(d)(4)(B) of the Internal Revenue Code. The temporary regulations provide rules regarding the time and manner for making an election under section 163(d)(4)(B) to treat qualified dividend income as investment income for purposes of calculating the deduction for investment interest. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Amy Pfalzgraf of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.163(d)-1 is revised to read as follows:

§ 1.163(d)-1 Time and manner for making elections under the Omnibus Budget Reconciliation Act of 1993 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

[The text of proposed paragraphs (a), (b), (c), and (d) is the same as the text of paragraphs (a), (b), (c), and (d) of § 1.163(d)-1T published elsewhere in this issue of the **Federal Register**.]

Nancy J. Jardini,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04-17797 Filed 8-4-04; 8:45 am]

BILLING CODE 4830-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2004-3]

Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is proposing to amend its regulations to permit the Library of Congress to record unpublished radio and other audio and audiovisual transmission programs. The Copyright Office regulations already provide for the Library of Congress to obtain copies of unpublished television transmission programs, either by recording fixations or by demanding copies in the form of a transfer, loan or sale at cost. This revised regulation makes similar provisions for audio transmission programs and includes transmission programs made available by radio broadcasts and by digital communications networks such as the Internet.

DATES: Comments are due by September 7, 2004.

ADDRESSES: If hand delivered by a private party, an original and five copies of any comment should be brought to: Room LM-401 of the James Madison Memorial Building and addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial, non-government courier or messenger, an original and five copies of any comment 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. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail, an original and five copies of any comment should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0400.

Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT:

Charlotte Douglass, Principal Legal Advisor to the General Counsel, Office of the Copyright General Counsel, Telephone: (202) 707-8380; Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: The collections of the Library of Congress serve as a repository of a vast number of works. The largest library in the world, the Library of Congress comprises more than 127 million items. In addition to acquiring works by purchase, gift and exchange, the Library acquires copies of works submitted to the Copyright Office for registration or mandatory deposit. 17 U.S.C. 408, 407. In fiscal year 2003, the incentives of voluntary copyright registration made nearly one million copies of works available to the Library of Congress for its collections. Of the 962,119 copies and phonorecords the Office transferred to the Library of Congress, 491,219 arrived under the mandatory deposit provisions of the copyright law. U.S. Copyright Office, *106th Annual Report of the Register of Copyrights 2003*, at 12 (2003). However, registration and mandatory deposit do not provide the Library with sufficient copies of certain types of works. For example, the Library does not predictably acquire a significant body of unpublished radio and television transmission programs.

Late in deliberations on the bill that became the 1976 Copyright Act, concern arose about whether mandatory deposit of only published works would be sufficient for the Library's collections, given that owners of publicly disseminated broadcasts were not obligated to deposit their works in the Library of Congress. The Register of Copyrights expressed that concern in the Second Supplementary Report, observing that transmission programs "are disseminated widely to the public and reproductions of them should be maintained in an archive in the Library of Congress." * * * U.S. Copyright Office, *Second Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*, Chapter XIII, at 15-16 (1975). On that basis, the report recommended that section 407 be amended "to require deposit of copies or phonorecords of copyrighted transmission programs under appropriate conditions." *Id.* at 16. Thereafter, the copyright bill provided a basis for the Library of Congress to acquire copies and phonorecords of non-syndicated radio and television transmission programs without imposing any hardships on broadcasters. H.R. Rep. No. 94-1476, at 152 (1976). This was accomplished by

giving the Library authority to record unpublished transmission programs in all cases where the copyright owner had made or authorized a fixation of the program. Additionally, the Copyright Office was given demand authority to obtain fixations of these programs by transfer, loan, or sale at cost. *Id.*

The copyright law defines a transmission program as a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit. 17 U.S.C. 101. Under section 407(e), the Librarian of Congress may make a fixation of an unpublished transmission program that has been fixed and transmitted to the public in the United States. The Library may make the fixation directly from a transmission to the public, and may reproduce one copy or phonorecord from such fixation for archival purposes. 17 U.S.C. 407(e)(1). With respect to the registration of these programs, when copyright applications and fees are timely and properly submitted, the recorded or demanded fixations can be used as registration deposits.

In 1983, the Copyright Office promulgated regulations under section 407(e) to permit the Library to record unpublished television programs. 48 FR 37208 (Aug. 17, 1983). The amendment proposed today expands existing regulations for television to radio and other audio and audiovisual transmission programs. As is currently the case, the regulation establishes a presumption that noncommercial television programs are unpublished, while it provides a procedure for the copyright owner to overcome that presumption. Commercial television programs are not presumed to be unpublished under the existing regulation. However, consistent with the Library's acquisition experience through registration and deposit, this amendment presumes that both commercial and noncommercial radio transmission programs are unpublished. The presumption regarding radio transmission programs is based on empirical Office experience, factual information from surveys conducted in the Copyright Office and surveys of databases covering registered works. For example, a recent survey of the Performing Arts Section of the Examining Division in the Office revealed that all of the applications for registration of radio programs on hand during the two week period in question were for registration in unpublished form. The applications were for radio broadcasts of recent vintage, e.g., opera broadcasts and contemporary

programming of lighter genres as well as radio broadcasts from the 1940s and 1950s. The Office also conducted a survey of a broader group of radio programs registered over a longer period of time from an independent database covering registered works. Most of these radio programs were registered as unpublished works as well. On the basis of these surveys and other experience, it is appropriate in the context of this regulation to adopt the presumption of nonpublication of radio programs at the time of transmission, even though the publication status of the works may change at some later time.

A feature of the original regulation, which would be retained, is the cost-saving option that copyright owners may choose to register a copyright claim using the Library's recording as the deposit copy. The copyright owner need only submit, within 90 days of the Library's recording, a completed application for registration, and the appropriate fee, together with a notice to the Copyright Office that the Library's recording is to be used to satisfy the deposit requirement, to thereby save the cost of the deposit copy. In view of the significant number of programs the Library seeks to record, it will not be practical as a matter of course to provide specific advance notice to the copyright owner that the Library plans to record an unpublished radio program. Such action would constitute a major administrative burden for the Library. Should the copyright owner wish to register a claim using the Library's recording, the owner may obtain information about whether the Library has recorded a radio program by making a written request of the Chief, Motion Picture, Broadcasting and Recorded Sound Division at the Library of Congress.

When the regulation on off-the-air videotaping was originally promulgated more than two decades ago, the Office observed that it had not exhausted the authority conferred by section 407(e), particularly noting that the regulation had intentionally omitted radio transmissions. 47 FR 5259 (Feb. 4, 1982). In recognition of the great change in the world of communications over the last twenty years and to specifically acknowledge today's Internet age environment, the Office is updating the regulation to meet the new world of cultural communications by including audio transmission programs within its reach as well as Internet and other audiovisual transmission programs. This action is in keeping with Congress's intent to grant the Library broad authority to record unpublished transmission programs. 17 U.S.C. 407(e).

The legislative history of the 1976 Copyright Act recounts that

The definition of “transmit”—to communicate a performance or display “by any device or process whereby images or sound[s] are received beyond the place from which they are sent”—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a “transmission” * * *.

H.R. Report No. 94–1476, at 64 (1976). Congress’s recognition in 1976 that transmission programs would not be confined to radio and television has been realized as the Internet has become a major medium for the transmission of programs, and the Library’s collections will be enriched by including many programs now being transmitted on the Internet. By expanding the scope of works to include radio, Internet,¹ cable, satellite and other audiovisual transmissions to the public, the Register now proposes to further exercise her statutory authority to enable the Library of Congress to collect and preserve broad-based contemporary cultural materials from all kinds of unpublished transmission programs that represent the nation’s rich heritage. *See also* Section 113, Transitional and Supplementary Provisions of the Copyright Act of 1976, Pub. L. No. 94–553, 90 Stat. 2541 (1976). With respect to television transmission programs, however, this amendment leaves the provisions of the original regulation essentially unchanged.

List of Subjects in 37 CFR Part 202

Copyright, Registration.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 202 of 37 CFR chapter II as follows:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702, 407 and 408.

2. Section 202.22 is amended as follows:

a. by revising the section heading;

¹ Within the scope of this regulation, Internet recording by the Library of Congress refers to the recording of transmission programs that are publicly performed, i.e., “streamed” on the Internet. It does not refer to programs that are offered for download or otherwise available for reproduction, since such programs would likely be considered published.

- b. by revising paragraph (a);
- c. by revising paragraph (b)(1);
- d. in paragraph (b)(2), by removing “by Pub. L. 94–553”;
- e. by revising the heading of paragraph (c);
- f. by revising paragraph (c)(1);
- g. in paragraph (c)(2), by removing “copied off-the-air” and adding “recorded” in its place;
- h. in paragraph (c)(3), by removing “copy off-the-air” and adding “record” in its place, by removing “television” before “transmission program”, and by removing “copying” and adding “recording” in its place;
- i. by revising paragraph (c)(4);
- j. in paragraph (c)(5) introductory text, by removing “off the air copying” and adding “recording” in its place;
- k. in paragraph (c)(5)(iii), by removing “with notice of copyright”;
- l. in paragraph (c)(6) introductory text, by removing “off-the-air” and by adding “or phonorecord” after “copy”;
- m. in paragraph (c)(7), by adding “or phonorecord” after “copy”;
- n. in paragraph (c)(8) introductory text, by adding “television” before “transmission programs”, “television” before “network stations” and “television” before “broadcasting station”;
- o. in the heading for paragraph (d), by removing “television”;
- p. in paragraph (d)(1), by adding “or phonorecord” after “copy”;
- q. in paragraph (d)(3)(ii), by adding “or phonorecord” after “copy” each place it appears;
- r. in paragraph (d)(3)(iv), by removing “copies” and adding “of the copies or phonorecords” after “use”;
- s. in paragraph (d)(3)(v), by removing “(a) and (c)”;
- t. in paragraph (d)(3)(vi), by adding “, or, in the case of an audio transmission program, a *compliance phonorecord*,” after “copy”;
- u. in paragraph (d)(4), by adding “or phonorecord” after “copy” each place it appears;
- v. in paragraph (d)(5), by adding “and phonorecords” after “Copies”;
- w. in paragraph (d)(6)(iii), by removing “shall be granted” and adding “should be granted” in its place;
- x. in the heading of paragraph (e) and paragraph (e)(1), by adding “and phonorecords” after “copies” each place it appears, and by adding “or phonorecord” after “copy”;
- y. by revising paragraph (e)(2);
- z. in paragraph (f)(1), by adding “and phonorecords” after “Copies”;
- aa. in paragraph (f)(1)(ii), by adding “or phonorecord” after “copy”;
- bb. in paragraph (f)(2), by adding “and phonorecords” after “Copies”, and by

adding “or phonorecord” after “copy” each place it appears; and

cc. in paragraph (g)(1), by adding “, or phonorecords” after “copies”, and by removing “television” and by adding “audio or audiovisual” in its place.

The additions and revisions to § 202.22 read as follows:

§ 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.

(a) *General.* This section prescribes rules pertaining to the acquisition of phonorecords and copies of unpublished audio and audiovisual transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended. It also prescribes rules pertaining to the use of such phonorecords and copies in the registration of claims to copyright, under section 408(b).

(b) * * *

(1) The terms *copies*, *fixed*, *phonorecords*, *publication*, and *transmission program* and their variant forms, have the meanings given to them in section 101 of title 17. The term *network station* has the meaning given it in section 111(f) of title 17. For the purpose of this section, the term *transmission* includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent.

* * * * *

(c) *Recording of transmission programs.* (1) Library of Congress employees, including Library of Congress contractors, acting under the general authority of the Librarian of Congress, may make a fixation of an unpublished audio or audiovisual transmission program directly from a transmission to the public in the United States, in accordance with subsections 407(e)(1) and (4) of title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress’s acquisition policies in effect at the time of fixation. Specific notice of an intent to record a transmission program will ordinarily not be given. In general, the Library of Congress will seek to record a substantial portion of the television programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will record selected programming transmitted by commercial television broadcast stations, both network and independent. The Library will also

record a selected portion of the radio programming transmitted by commercial and noncommercial broadcast stations. Additionally, the Library will record a selected portion of unpublished Internet, cable and satellite programming transmitted to the public in the United States.

* * * * *

(4) The Library of Congress is entitled under this paragraph (c) to presume that a radio program transmitted to the public in the United States has been fixed but not published at the time of transmission, and that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code has been fixed but not published.

(e) * * *

(2) All copies and phonorecords acquired or made under this section, except copies and phonorecords of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the following restrictions concerning copying and access: in the case of television or other audiovisual transmission programs, copying and access are governed by Library of Congress Regulation 818-17, *Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress*, or its successors; in the case of audio transmission programs, copying and access are governed by Library of Congress Regulation 818-18.1, *Recorded Sound Listening and Duplication Services*, or its successors. Transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the "American Television and Radio Archives Act," 2 U.S.C. 170, and such regulations as the Librarian of Congress shall prescribe.

* * * * *

Dated: August 2, 2004.

David O. Carson,
General Counsel.

[FR Doc. 04-17939 Filed 8-4-04; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO-001-0076a, CO-001-0077a; FRL-7785-1]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes, Lamar and Steamboat Springs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado on July 31, 2002, for the purpose of redesignating the Lamar, Colorado and Steamboat Springs, Colorado areas from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) under the 1987 standards. The Governor's submittal, among other things, documents that the Lamar and Steamboat Springs areas have attained the PM₁₀ national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for each of the areas demonstrating maintenance of the PM₁₀ NAAQS for ten years. EPA is approving these redesignation requests and maintenance plans because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Upon the effective date of this approval, the Lamar and Steamboat Springs areas will be designated attainment for the PM₁₀ NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

DATES: Written comments must be received in writing on or before September 7, 2004.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions (sections (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section) described in the direct final rule which is located in the Rules Section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection Monday through Friday, 8 a.m. to 4 p.m., excluding federal

holidays, at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530.

FOR FURTHER INFORMATION CONTACT:

Libby Faulk, EPA, Region VIII, 999 18th Street, Suite 300, Mailcode 8P-AR, Denver, Colorado, 80202, (303) 312-6083, e-mail faulk.libby@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04-17657 Filed 8-4-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04-2298, MB Docket No. 04-283, RM-10965]

Digital Television Broadcast Service; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Montana State University proposing the allotment and reservation of DTV channel 46 for noncommercial educational use at Kalispell, Montana. DTV Channel *46 can be allotted to Kalispell at reference coordinates 48-00-48 N. and 114-21-55 W. with a power of 186, a height above average terrain HAAT of 830 meters. Since the community of Kalispell is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before September 23, 2004, and reply comments on or before October 11, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in