coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–1055 to read as follows:

§ 165.T08–1055 Safety Zone; Lower Mississippi River, Natchez, MS

(a) *Location.* The following area is a temporary safety zone: All navigable waters on the Lower Mississippi River from mile marker 364.4 to mile marker 365.5 in the vicinity of Natchez, MS.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Lower Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the temporary safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 6 p.m. through 7 p.m. on December 31, 2024.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: December 03, 2024.

Kristi L. Bernstein,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2024–29089 Filed 12–11–24; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2005–6]

Statutory Cable, Satellite, and DART License Reporting Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office (''Office'') is issuing a final rule governing royalty reporting practices of cable operators, and the Statement of Account form and filing requirements. This final rule makes regulatory changes regarding procedures for cable system operators. In some areas, similar changes are being made to the regulations governing statutory licenses for satellite carriers and digital audio recording devices or media.

DATES: Effective January 27, 2025.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 111 of the Copyright Act (''Act''), title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a ''primary transmission'' made by a television station licensed by the Federal Communications Commission (''FCC''). Cable operators that retransmit broadcast signals in accordance with this provision are required to pay royalty fees to the Copyright Office (''Office''), among other requirements. The royalty amounts are determined based on a specified percentage of cable operators' reported gross receipts collected for secondary transmissions, as well as additional amounts for any distant signal equivalent (''DSEs'') carried by the cable system.[1] These royalty fees are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution to copyright owners eligible to receive a share of the royalties.[2]

In conjunction with their royalty payments, cable operators must complete and file statements of account (''SOAs''), which provide a record regarding their retransmissions and associated royalty payments to ''promote uniform and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright [Royalty Judges] in reviewing and using the information provided.'' [3] Section 111 identifies a variety of information that must be reported to the Copyright Office on the SOA, including the number of channels by which the system made secondary transmissions, the names and locations of all primary transmitters used, and, as particularly relevant here, the ''total number of [cable system] subscribers'' and the ''gross amounts'' paid to the cable system by these subscribers ''for the basic service of providing secondary transmissions of primary broadcast transmitters.'' [4]

Section 111 tasks the Register of Copyrights (''Register'') with prescribing the specific requirements for the SOA by regulation.[5]

B. Regulatory Background

As directed by section 111, the Office has adopted regulations to implement the statute's reporting requirements [6] as well as the design of the SOA form.[7] In 1977, to address the law's requirement that the ''number of subscribers'' and ''gross amounts'' paid to cable operators be reported,[8] the Office ''proposed . . . that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this

[1] 17 U.S.C. 111(d)(1)(B).

[2] *Id.* at 111(d)(2). The Office distributes those royalties in accordance with periodic distribution orders issued by the Copyright Royalty Board (''CRB''). *Id.*

[3] *Compulsory License for Cable Systems,* 42 FR 61051, 61054 (Dec. 1, 1977) (explaining benefits of using a standard SOA form, referencing the Copyright Royalty Tribunal, a precursor to the current Copyright Royalty Judges system). *See* 17 U.S.C. 111(d)(1)(A).

[4] 17 U.S.C. 111(d)(1)(A).

[5] 17 U.S.C. 111(d)(1).

[6] 37 CFR 201.17(e)(6) and (7).

[7] *Id.* § 201.17(d). The SOA forms are available in PDF and Excel format on the Office's website at *https://www.copyright.gov/licensing/sec_111.html.*

[8] 17 U.S.C. 111(d)(2) (1977).

purpose.'' [9] In the subsequent 1978 final rule, which adopted regulatory language almost identical to the present § 201.17(e)(6), the Office noted that ''although this information 'will not provide a definitive or detailed comparison with the reported gross receipts,' it will be useful for at least a rough comparison with the reported gross receipts, and gives meaning to the statutory requirement that the 'number of subscribers' be given.'' [10] The Office has consistently followed this approach in its subsequent rulemakings in this area.

The Office's current regulations require the following information, among other data, to be reported on SOAs by cable operators: ''[t]he designation 'Area Served', followed by the name of the community or communities served by the system''; ''[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters''; ''[t]he number of subscribers to the cable system in each such subscriber category''; and ''[t]he charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions.'' [11] The SOA form organizes this information into specific areas, several of which are relevant to this rulemaking. Space D of the SOA (titled ''Area Served'') requests information identifying ''each separate community served by the cable system.'' Space E (titled ''Secondary Transmission Service: Subscribers and Rates'') requests information that ''should cover all categories of secondary transmission service of the cable system,'' including ''the number of subscribers to the cable system, broken down by categories of secondary transmission service,'' and the ''rate charged for each category of service.'' [12] Space K (titled ''Gross Receipts'') requires cable operators to ''[e]nter the total of all amounts (gross receipts) paid to [the] cable system by subscribers for the system's secondary transmission service (as identified in Space E) during the accounting period.'' [13] Finally, Space F (titled ''Services Other Than Secondary Transmissions: Rates'') requires cable operators to list rate information ''with respect to all . . . services that were not covered in space E, that is, those services that are not offered in combination with any secondary transmission service for a single fee.'' [14]

C. Procedural Background

This rulemaking began after the Motion Picture Association of America, Inc. (''MPA'') [15] filed a petition on behalf of its member companies and other producers and/or distributors of movies and television series (hereinafter ''Program Suppliers'') asking the Office to address a number of issues relating to the SOA reporting practices of cable operators under section 111.[16] The Program Suppliers expressed concerns that the subscriber and rate information reported by cable operators under the Office's regulations failed to provide sufficient data to support the intended ''rough comparison'' copyright owners should be able to conduct between subscriber information and gross receipts. Their concerns focused on the relationship between the information provided in Space E and Space K.[17] They asked the Office to ''require greater congruity between the 'gross receipts' information and the subscriber and rate information provided on the SOAs,'' and ''greater detail concerning the nature of revenues that a cable operator includes and excludes in its 'gross receipts.' '' [18]

After reviewing the Petition, the Office published a notice of inquiry (''NOI'') seeking comment on the regulatory proposals and recommendations raised by the Program Suppliers.[19] Multiple parties submitted responsive comments and reply comments.[20] After the NOI's publication, Congress took action that addressed some of the issue raised by the Office. The Satellite Television Extension and Localism Act of 2010 (''STELA''), followed by the STELA Reauthorization Act of 2014 (''STELARA''),[21] made amendments to section 111, including the royalty rate calculations for cable operators and addressing the transition to digital television broadcasts.[22] STELA also added a right for copyright owners to conduct confidential audits to verify the information provided on the SOAs.[23] The Register of Copyrights was directed to issue regulations establishing the procedure by which copyright owners could pursue a confidential audit to ''confirm the correctness of the calculations and royalty payments reported'' on SOAs commencing on or after January 1, 2010.[24] These regulations were enacted in 2014.[25]

In 2017, the Office published a notice of proposed rulemaking (''NPRM'') on the NOI issues that remained open after the intervening statutory and regulatory changes.[26] In addition, the rulemaking proposed revisions to SOA forms and/or the Office's related regulations to streamline administration of SOAs. The responses to the NPRM [27] reflected agreement on some proposals, but also raised a number of issues for the Office to consider and address before finalizing this rule. The Office convened multiple *ex parte* meetings with groups of stakeholders to discuss these issues and to attempt to narrow areas of disagreement.[28] Having reviewed and considered the feedback received in response to the NOI and NPRM, the Office is issuing a final rule that adopts certain of its proposals, withdraws others, and makes some modifications.[29]

II. Summary of Final Rule

After careful consideration of the comments and the record as a whole, the Office is adopting several changes to

[9] 42 FR at 61054.

[10] 43 FR 958, 959 (Jan. 5, 1978).

[11] 37 CFR 201.17(e)(4), (6)(i) through (iii).

[12] Paper Form SA1–2 at 2, Space E (''Short Form SOA''); Paper Form SA3 at 2, Space E (''Long Form SOA'').

[13] Short Form SOA at 6, Space K; Long Form SOA at 7, Space K; *see also* 37 CFR 201.17(e)(6) and (7) (describing corresponding SOA requirements).

[14] Short Form SOA at 2, Space F; Long Form SOA at 2, Space F. *See* 37 CFR 201.17(e)(8).

[15] The Motion Picture Association of America is now known as the Motion Picture Association, or MPA.

[16] The petition can be found at *https://www.copyright.gov/rulemaking/section111/petition20050607.pdf* (the ''Petition'').

[17] Program Suppliers Initial NOI Comment at 6. Broadcast Music, Inc., The American Society of Composers, Authors and Publishers, Broadcast Music Inc., and SESAC, Inc. (collectively, ''Music Claimants'') submitted their own comments in response to the NOI, stating that ''as a general matter, [they] support MPAA's comments and proposed revisions to the SOAs.'' Music Claimants Initial NOI Comment at 2.

[18] Petition at 3; *see also* Program Suppliers Initial NOI Comment at 5–7.

[19] 71 FR 45179 (Aug. 10, 2006).

[20] The Office received six comments and three reply comments to the NOI. The initial and reply comments to the NOI have been posted on the Office's website at *https://copyright.gov/rulemaking/section111.*

[21] *See* Satellite Television Extension and Localism Act of 2010, Public Law 111–175, 124 Stat. 1218 (2010); STELA Reauthorization Act of 2014, Public Law 113–200, 128 Stat. 2059 (2014).

[22] 17 U.S.C. 111(d)(1)(B) through (F), (f)(4).

[23] *Id.* at 111(d)(6). *See* 37 CFR 201.16.

[24] 17 U.S.C. 111(d)(6); 37 CFR 201.16(h), (1), (o).

[25] *Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers,* 79 FR 68628 (Nov. 18, 2014).

[26] *Statutory Cable, Satellite, and DART License Reporting Practices,* 82 FR 56926 (Dec. 1, 2017).

[27] The comments are posted on the Office's website at *https://copyright.gov/rulemaking/section111.*

[28] The majority of the *ex parte* meetings occurred in 2019 and 2020. The Office requested additional input in late 2022. The letters reflecting the *ex parte* discussions can be found at *https://copyright.gov/rulemaking/section111/ex-parte-communications.*

[29] The Office has adopted the organization and section headings in the NPRM for consistency.

the regulations governing SOAs. First, the Office is revising the regulatory definition of ''gross receipts'' to clarify that equipment fees (formerly called ''converter'' fees) and broadcast fees must be included and reported in Space E. Second, the final rule removes the regulatory provision requiring remitters to provide information regarding ''Services Other Than Secondary Transmissions: Rates'' in Space F, and eliminates all references to Grade B contour in § 201.17 and on the cable SOAs. Third, the final rule revises reporting requirements related to the name of the community or communities served by requiring cable system operators to provide ''county'' information in Space D. Fourth, while the Office is withdrawing proposals to amend the regulatory definition of the phrase ''cable system'' and to require more detailed reporting of subscriber and rate information in Space E, it is amending Space E to require that operators fill in the spaces requesting information regarding categories of service.

Finally, the final rule makes several technical amendments and revises certain reporting practices that are also pertinent to the filing of SOAs for other statutory licenses. For example, it clarifies that cable system operators must use the SOA form prescribed by the Office, and include any and all information requested in the instructions for the SOA, as well as the information required by the regulations. The final rule also includes the technical changes proposed in the NPRM relating to the processing of refunds, supplemental or amended payments, and calculation of interest, as well as case management procedures. These latter changes will be reflected in parallel amendments to regulations for satellite carrier and digital audio recording equipment and media.

The amendments to the regulations reflected in this rule require the development of new SOA forms, which the Office is preparing. Until new forms are developed, cable service operators should use the most current forms posted on the Office's website while complying with the new regulatory requirements regarding the information to be reported.

III. Section 111—Specific Changes

A. Program Suppliers' Request for Greater Congruity Between Reported Subscriber and Rate Information (Space E) and Gross Receipts (Space K)

In response to the Program Suppliers' original request that cable operators provide more detailed information on the SOA, the NPRM proposed a number of changes to the information sought in Space E regarding subscribers. Having reviewed and considered all of the comments received, the Office has been persuaded not to make the majority of the proposed changes and only to make minor adjustments to accommodate its conclusions about reporting equipment fees and broadcast fees. Its specific findings and conclusions are explained below.

1. Proposed Requirement To Provide More Detailed Reporting of Subscriber and Rate Information (Space E)

37 CFR 201.17(e)(6) currently requires remitters to provide in Space E ''[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters.'' [30] The regulation further states that ''[e]ach entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) . . . shall be considered one subscriber'' [31] subject to charges by the cable system for the basic service of providing secondary transmissions. These requirements are intended to complement the regulatory definition of ''gross receipts,'' which includes ''the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees.'' [32]

In response to the request for more granularity, the NPRM proposed to update the subscriber and rate information required in Space E to require remitters to break out subscription data into separate tiers of service and list the per-tier rate or range of rates. The intent was to provide copyright owners with more information when deciding whether to make use of the audit right included in section 111.

In its initial comments to the NPRM, AT&T disagreed with the Office's proposal.[33] It stated that the availability of audits after passage of STELA, through which companies make their books available for inspection by copyright owners, rendered unnecessary the additional information proposed in the NPRM. In addition, AT&T noted that compliance with the proposed regulations would result in significant extra work and expense for cable companies.[34] NCTA—The Internet and Television Association (''NCTA'') also opposed the proposal. It stated that, due to the bundling of services and ''promotional discounts,'' providing the information proposed in the NPRM would be onerous and could lead to the disclosure of the cable companies' proprietary information.[35]

In their initial comments, the Copyright Owners observed that ''the disparities [between Space K and Space E] seem to rest largely, though not fully, on a disconnect between (1) the monthly rate that subscribers must *actually* pay to receive broadcast signals and (2) the monthly service fees that cable operators report in Space E.'' [36] They questioned whether the NPRM's Space E proposal would provide ''rough comparability'' with Space K ''unless the rate information reflects what subscribers actually pay to receive broadcast signals.'' [37] They suggested instead that cable operators report ''each category of service that includes retransmitted broadcast signals, with the number of subscribers in each group, the published rate card fee for each, and average monthly fee actually paid.'' [38] In its reply comments, NCTA opposed the Copyright Owners' proposed requirement for reporting monthly subscriber information. Instead, it suggested reducing the number of categories of service reported on Space E.[39]

In subsequent *ex parte* meetings with the Office, NCTA and MPA jointly proposed that the current Space E requirements be replaced with requirements that cable operators report aggregated average number of monthly subscribers for the six-month accounting period and average monthly per subscriber fees collected during that period.[40] In response to the joint NCTA–MPA proposal, the Copyright Owners,[41]

[30] 37 CFR 201.17(e)(6)(i). As a result of other changes made in this rule, § 201.17(e)(6) will be renumbered as § 201.17(e)(2).

[31] *Id.* § 201.17(e)(6)(iii)(B).

[32] *Id.* § 201.17(e)(6)(i).

[33] AT&T Initial NPRM Comments at 2–5.

[34] *Id.* at 3–6.

[35] NCTA Initial NPRM Comments at 6–7.

[36] Copyright Owners I Initial NPRM Comments at 5. In their initial NPRM comments, the Copyright Owners included the MPA, Joint Sports Claimants, the National Association of Broadcasters (''NAB''), Public Broadcasting Service, Settling Devotional Claimants, and Canadian Claimants Group (''Copyright Owners I'').

[37] *Id.* at 6.

[38] *Id.* at 6–7.

[39] NCTA Reply NPRM Comments at 11–12, 14–15.

[40] Letter from Mary Beth Murphy, Vice Pres. & Dep. Gen. Coun. NCTA to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, May 20, 2020, attachment at 2 (''NCTA–MPA *Ex Parte* Letter #1'').

[41] As referenced here, the Copyright Owners no longer include the MPA. However, they have stated that they collectively received approximately 78%

in a separate *ex parte* meeting, stated that section 111 permits the Office to require reporting of ''other data,'' and is not limited to an aggregated six month report.[42] They further stated that reporting monthly averages, as opposed to a six-month aggregate, would not be ''unduly burdensome.'' [43] Responding to these statements, NCTA and MPA expressed concern that by providing monthly data, instead of a six-month average, ''competitors could use that information to their competitive advantage by closely tracking the operator's relative success and failure under discrete promotional campaigns.'' [44]

The Office appreciates the inputs from stakeholders, including their efforts to narrow their differences. It is apparent from the comments of the parties, and their statements at *ex parte* meetings, that they do not support the NPRM proposal to provide more detail in Space E. The Office is therefore withdrawing its proposal. At the same time, it declines to adopt the NCTA–MPA proposal to limit Space E reporting to a six-month aggregation of subscribers and average rates. It concludes that this proposal would not provide sufficient information to allow the Copyright Owners to make the ''rough comparison'' between the gross receipts reported in Space K and the subscriber information reported in Space E. Therefore, except as described below, the Office is not changing the requirements of Space E at this time. It will continue to monitor the issue of comparability between Space E and Space K going forward.

The final rule includes several changes to Space E that were either raised by the NPRM or introduced during the comment process and fully considered by stakeholders during the rulemaking proceeding. Specially, the Office is revising the regulatory definition of ''gross receipts'' to make clear that equipment fees (formerly called ''converter'' fees) and broadcast fees must be included in gross receipts and reported in Space E. The Office will revise its Section E instructions for the SOA accordingly. The rationale for these amendments is discussed in Section 3 below.

In addition, as discussed in the NPRM, the Office will require that spaces on the SOA seeking information regarding categories of service not be left blank.[45] If a cable operator does not serve a specific category, a ''zero'' or a ''N/A'' (not applicable) must be reported in the appropriate space. These revisions are intended to facilitate the review of cable SOAs by the Office's Licensing Division; they will be implemented in the instructions to Space E in the SOA and do not require amending the regulations.

2. Reporting of Bundled Services in Gross Receipts (Space K)

The NPRM also addressed how gross receipts should be reported when cable services are offered by cable operators as part of a ''bundle'' of services to subscribers. For example, many cable operators now offer video services plus internet and/or voice services together at a price that is less than what a subscriber would pay to subscribe to each service separately (so-called ''double play'' and ''triple play'' bundles).[46] Noting that the Office receives questions on how gross receipts for cable services should be reported when sold as part of a bundle, the NPRM stated that it was ''considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service.'' It proposed the addition of the following new language in its regulatory definition of ''gross receipts'' to address bundled services: when cable services are bundled with non-cable services, ''gross receipts shall not include any fees collected from subscribers for the sale of internet services or telephony services when such services are bundled together with cable service.'' ''[I]nstead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable services as an unbundled stand-alone product.'' [47] The Office sought public comment on the proposed definition and ''on how cable operators currently report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services, and whether the Office's regulations should be amended to provide more guidance.'' [48]

The NPRM proposal is consistent with the Office's decades-long interpretation of ''gross receipts'' in section 111 as requiring reporting of all subscription fees collected by a cable operator when its service includes broadcast stations. For example, when a video service tier includes both broadcast and non-broadcast stations, the Office requires the cable operator to report all of the revenues from the broader tier to be included in gross receipts, not just the revenues that would have been garnered from a broadcast-only tier. This interpretation of gross receipts, barring proration of mixed cable channel tiers, was issued in 1984.[49] In other words, cable operators are not permitted to prorate gross receipts within tiers of service that contain broadcast channels according to the ratio of broadcast to non-broadcast channels in a given tier.

In their initial comments, NCTA agreed that the exclusion of internet and voice services in the proposed rule was proper.[50] At the same time, however, it suggested that the Office substantively change its approach to the reporting of revenue in this circumstance. It asked the Office to recognize generally accepted accounting principles, or GAAP, as the method for determining the amount of revenue to be reported for bundled services.[51] It suggested that employing GAAP would be a more appropriate standard for reporting the video portion of the bundled revenue than the proposed rule and pointed out that other compulsory licenses use GAAP in their analyses.[52] NCTA criticized the proposed rule on the grounds that it purportedly assigns the discount for the bundled services to the non-video services and therefore allows royalty payments to be computed against revenue from services that do not include broadcast video.[53]

In support of its comments, NCTA submitted the declaration of Professor William Holder, which states that GAAP is the method recognized as the most authoritative for businesses to prepare their financial statements.[54] As explained by Prof. Holder, the

of the royalty fees distributed in the most recent distribution by the CRB. Letter from Daniel A. Cantor, Esq., Arnold & Porter, to Anna B. Chauvet, Esq., Assoc. Gen. Coun., U.S. Copyright Office, Sept. 16, 2020, at 1 (''Copyright Owners II *Ex Parte* Letter #5'').

[42] Letter from John I. Stewart, Jr., Crowell & Moring, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, June 18, 2020, at 2–3 (''Copyright Owners II *Ex Parte* Letter #4'').

[43] *Id.* at 3.

[44] Letter from Mary Beth Murphy, Esq., NCTA, and Dennis Lane, Esq., Stinson, LLP, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, July 30, 2020, at 7 (''NCTA–MPA *Ex Parte* Letter #3'').

[45] 82 FR at 56930.

[46] *Id.* at 56931.

[47] *Id.* at 56937.

[48] *Id.* at 56931.

[49] *See* 49 FR 13029, 13035 (1984).

[50] NCTA Initial NPRM Comments at 12.

[51] *Id.* at 10–18.

[52] *Id.* at 13–14 & n.37.

[53] *Id.* at 14–15. NCTA stated that, under GAAP, the discount for the bundle would be assigned in a manner proportionate to the unbundled prices of the separate services. *Id.* at 14.

[54] Declaration of Prof. William Holder, October 3, 2018, at 5, attached as Exhibit A to NCTA Initial NPRM Comments (''Holder Declaration'').

application of GAAP by the Financial Accounting Standards Board (''FASB'') is intended to provide financial information that is relevant and a ''faithful representation'' of the financial status of the business that is neutral and non-biased.[55] His declaration states that several regulatory bodies require businesses to present their financial statements in accordance with GAAP.[56] According to Prof. Holder, applying the principles of GAAP, the FASB has created a method of allocating the revenue received in a bundled discount arrangement.[57] In his view, this allocation is ''based on the relative proportion of each element in the arrangement to the total consideration that is expected to be received.'' [58] He concludes that using a GAAP approach would allocate the discount in the bundled price to each element according to its relative percentage of the unbundled price of the group of discounted goods or services.[59]

In their initial comments, Copyright Owners I, whose members then included the MPA, Joint Sports Claimants, the National Association of Broadcasters (''NAB''), Public Broadcasting Service, Settling Devotional Claimants, and Canadian Claimants Group,[60] stated that there was disagreement among the group as to the proper method of reporting bundled services.[61] They agreed with the Office that internet and voice services should not be included in gross receipts [62] and noted that the language of the proposed rule appeared to track ''prior Office and judicial guidance concerning the meaning of the term Gross Receipts.'' [63] In their first reply comments responding to NCTA's proposal, the they stated that they ''do not have a common position on the issue'' and indicated that they would file separate comments.[64]

In their second reply comments, the Copyright Owners II—representing the same groups as before *except* for the MPA—stressed that the Office's proposed rule ''is consistent with (and indeed mandated by) the Office's longstanding interpretation of the term Gross Receipts.'' [65] They stated that ''where CSOs [cable service operators] offer bundled products or services that include broadcast signals, they must include in Gross Receipts the full amount that they charge subscribers to receive the Basic Service alone.'' [66] They suggested that NCTA's proposal would be contrary to the *Cablevision* decision, in which the court upheld the Office's interpretation of gross receipts as including the total revenues from any tier of video services that includes broadcast services.[67] They took the position that, whatever the merits of GAAP in various other contexts, the statutory mandate of section 111 was to the contrary.[68] From their perspective, employing GAAP would permit greater subjectivity in the reporting of revenues than was implied by NCTA's comments,[69] and would be unfair to copyright owners.[70] For example, different bundles offered by a single cable operator might contain a variety of different video services, not all of which would have a stand-alone price.[71]

Copyright Owners II submitted a declaration from Sam D. Wild, CPA, in response to Prof. Holder's declaration submitted by NCTA.[72] Mr. Wild stated that although it is appropriate to use GAAP in financial reporting, ''calculating royalties is different than and distinct from preparing financial statements.'' [73] He stated that royalties are calculated according to contracts or statutory mandates, which may differ from the requirements of GAAP.[74] He also stated that GAAP would not provide an easy answer if each service in the bundle does not have a separate stand-alone price; he asserted that in such a circumstance, using GAAP would increase the subjectivity of the calculation.[75]

In its reply comments, NCTA repeated its suggestion that GAAP provides the proper method for reporting revenues from bundled services.[76] It reiterated that the proposed rule would apply the bundle discount to the non-video services only, which NCTA claimed would result in royalties being paid on non-video revenues.[77] It suggested that using GAAP aided consumers by allowing cable operators to offer bundles in a competitive market, giving consumers additional choices at a variety of price levels.[78] NCTA again stated that GAAP is a well-recognized method of accounting for revenues, and that it is used by the government, including the Office, in other contexts.[79]

In their separate reply comments, Program Suppliers also supported the use of GAAP for reporting bundled revenues. They stated that the circumstances in the cable industry today are significantly different from those in 1988, when *Cablevision* was decided and when the Office issued regulations implementing that decision.[80] They took the position that the bundling of non-video with video services at a single price is not the same as combining broadcast and non-broadcast channels in a single tier at a single price.[81] They stated that the changed circumstances ''demonstrates that the Office *could* adopt a new gross receipts interpretation to allow use of GAAP methodology, . . . but still leaves open the question of whether adoption of the GAAP methodology would be consistent with Section 111's purpose and intent.'' [82] Program Suppliers stated that the use of GAAP ''represents a change from how gross receipts were calculated under the 1988 Notice's policy,'' but argued that GAAP now represents the more appropriate method of reporting bundled revenues.[83]

[55] Holder Declaration at 6.

[56] *Id.* at 7.

[57] *Id.* at 9. Prof. Holder's declaration further states that this methodology is not limited to cable service bundling; it is applicable generally to businesses offering a group of products or services at a discounted price from the sum of their separate prices. *Id.*

[58] *Id.*

[59] Thus, if the unbundled prices of cable, internet, and voice services were $10, $10, and $5 per month respectively, and the bundled price was $20 per month for all three, the cable portion would be allocated at 40% of the bundled price ($10/$25), or $8. The proposed rule, by contrast, would require reporting of $10 per month in the gross receipts.

[60] As noted below, in later comments the MPA sided with NCTA on this issue.

[61] Copyright Owners I Initial NPRM Comments, at 7–8.

[62] *Id.* at 8.

[63] *Id.*

[64] Copyright Owners I NPRM Reply Comments, at 7.

[65] Copyright Owners II NPRM Reply Comments at 2.

[66] *Id.* at 3. Copyright Owners II also dispute the assertion in the Holder Declaration that cable operators ''generally'' use GAAP when reporting gross receipts for bundled services. Rather Copyright Owners II assert that their audits have found that ''while some CSOs improperly utilize what they interpret to be GAAP, other CSOs properly follow the Office's existing rules and have included in Gross Receipts the subscriber revenues as required by precedent and not GAAP.'' *Id.* at 4.

[67] Copyright Owners II NPRM Reply Comments at 3. *See id.* at 4–8 (discussing the applicability of *Cablevision*).

[68] *Id.* at 10–11.

[69] *Id.* at 4, 11–14.

[70] *Id.* at 14.

[71] *Id.* at 12–13.

[72] Declaration of Sam D. Wild, CPA, October 24, 2018, attached as Exhibit 1 to Copyright Owners II Reply Comments (''Wild Declaration'').

[73] Wild Declaration at 2.

[74] *Id.*

[75] *Id.* at 3.

[76] NCTA Reply NPRM Comments at 2–6.

[77] *Id.* at 3.

[78] *Id.*

[79] *Id.* at 5–6.

[80] Reply Comments of Program Suppliers at 2–3 (Oct. 25, 2018).

[81] *Id.* at 5.

[82] *Id.* at 4 (emphasis in original).

[83] *Id.* at 7–8. The 1988 Notice refers to the Office's Notice of Policy Decision, issued on January 28, 1988. *See Compulsory License for Cable Systems, Reporting of Gross Receipts,* 53 FR 2493 (Jan. 28, 1988). In subsequent *ex parte* meetings with the Office, the parties reiterated their positions relating to the applicability of GAAP. *See* Letter from Mary Beth Murphy, Esq., NCTA and Dennis Lane, Esq.,

The Office appreciates the efforts of the commenters to assist its decision-making through their comments and by supplying declarations of accounting experts.[84] After careful consideration of the comments and declarations, as well as *ex parte* meetings held in 2020 and 2022 which are publicly captured in *ex parte* letters provided to the Office, the Office has decided that its proposal in the NPRM is most consistent with its longstanding interpretation of gross receipts under section 111, which it has applied consistently. On the current record, the Office believes that its proposed rule reflects the appropriate interpretation of the statute and is not persuaded that GAAP necessarily leads to a simpler and more appropriate calculation of the value of the video services in a bundle in the context of section 111 and congressional intent. To the contrary, the Office concludes that changing its interpretation of gross receipts at this time is not supported by the record or by the statute.

For example, Professor Holder's implementation of GAAP in his declaration assumes that consumer preferences and valuation of the constituent services in a bundle are accurately measured by the proportionate ''rack rate'' of each service sold separately. But that assumption is not necessarily correct.[85] Bundling may be a reflection of the cable operator's desire to maximize revenue, with the understanding that consumers may not value the other services in the bundle (*e.g.,* internet and/or voice) enough to pay the full asking price, and that a discounted bundle that includes those other services at a price slightly higher than the video alone, maximizes cable system revenue. The record does not provide information on this issue, nor is it clear that the calculation would be the same for every bundle of services. Moreover, there is no evidence in the record about the cost of including the additional services in the bundle; if the marginal cost of including internet and voice services is very small, then a revenue maximizing cable system could increase revenue and profit by including those services at just above their marginal cost.[86] Finally, the record does not supply information about the extent to which bundled services are available as stand-alone offerings. Thus, it is difficult for the Office to determine whether the use of GAAP in these circumstances would be an appropriate measure of the value of the video services that must be included in gross receipts. Moreover, it is not clear that GAAP must be interpreted as Professor Holder's example indicates. If GAAP is more subjective than his example suggests—for example, because the bundled services are not all available at a stand-alone price—then one of the goals of section 111, namely, simplicity of calculating gross receipts, would be undermined.[87] As noted by the Program Suppliers, the use of GAAP is not mandated by the statute, and using GAAP would represent a change from the Office's existing interpretation of the statute.

The Office believes that including the full, non-bundled value of the video services is consistent with Congress' intent that the ''gross receipts'' reported serve as the baseline against which royalties are calculated, and further concludes that its proposal is consistent with Congress' intent for gross receipts to be calculated simply (and, by implication, audited simply).

3. Reporting of Equipment Fees, Broadcast Fees, and Franchise Fees in Gross Receipts (Space E)

a. Equipment Fees

The current regulations require cable operators to include ''converter'' fees in their gross receipts. In the NPRM, the Office proposed to change the terminology in the definition of gross receipts from ''converter'' fees to ''equipment'' fees, in recognition that the latter is a more accurate description of what is currently sold or leased to cable subscribers.[88] The Office viewed this proposal as a technical one ''intended to modernize regulatory terminology'' to align with cable operator's current practices.[89]

In initial comments to the NPRM, NCTA expressed no opposition to the proposal.[90] At the same time, Copyright Owners I, which includes the MPA, supported the Office's technical change, while adding more broadly that ''if the cable operator charges subscribers for its use, and subscribers use the converter/equipment/app/device to obtain the basic service of providing retransmitted broadcast signals, the subscriber revenues should be included in gross receipts.'' [91] In its reply comments, NCTA opposed the inclusion of any equipment fees in gross receipts, arguing that ''equipment fees are not service fees'' under section 111.[92] It contended that such fees are becoming less important as more cable operators offer free apps to allow subscribers to view broadcast and video services on different devices.[93]

In subsequent *ex parte* meetings with the Office, NCTA and the MPA announced that, as part of a compromise of their previous disagreements related to the rulemaking's proposals, they now jointly opposed the inclusion of equipment fees in gross receipts, while Copyright Owners II continued to express support for including them.[94] Specifically, NCTA and MPA argued that, if a subscriber is given the option of accessing video services (including broadcast signals) through a free software application on the subscriber's television, and the subscriber still chooses to receive video services through equipment provided by the cable operator, then the equipment fees should not be included in gross receipts.[95]

Consistent with its long-held view, the Office believes that, regardless of the descriptor used, equipment fees are properly included in gross receipts. The Office's approach in this area is well-established.[96] It requires the fees

Stinson, LLP, to Regan A. Smith, Gen. Coun. & Assoc. Register of Copyrights, U.S. Copyright Office, May 22, 2020, at 4–5 (''NCTA–MPA *Ex Parte* Letter #2''); NCTA–MPA *Ex Parte* Letter #3, at 4–6; Letter from Daniel A. Cantor, Esq., Arnold & Porter, to Regan A. Smith, Esq., Gen. Coun., U.S. Copyright Office, June 10, 2020, at 2–3 (''Copyright Owners II *Ex Parte* Letter #2''); Copyright Owners II *Ex Parte* Letter #5 at 3–4.

[84] *See generally* Holder Declaration; Wild Declaration.

[85] *See also Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Ratio Services,* 82 FR 56725, 56734 (CRB, Nov. 30, 2017) (discussing the economic effect of bundling certain types of audio services).

[86] To be sure, if a consumer highly valued internet services and placed little value on video services, the calculation would work in reverse; the revenue maximizing cable operator would want to sell the internet services to that consumer at close to full price and add the other services at closer to their marginal cost. However, the record also does not contain information about the marginal cost of providing video services in addition to internet and/or voice services.

[87] *See Cablevision Systems Development Co.* v. *Motion Picture Association of America, Inc.,* 836 F.2d 599, 611 (D.C. Cir. 1988) (''Congress *never* contemplated a precise congruence of the royalties paid and the amount of distant non-network programming actually carried. Instead, Congress picked a *convenient* revenue base and used the DSEs to discount it in a reasonable manner.'') (emphasis in original); *id.* at 612 (''Congress . . . chose an easily calculable revenue base and used the DSEs to approximate the value received by the cable companies.'').

[88] 82 FR at 56930.

[89] *Id.*

[90] *See generally* NCTA Initial NPRM Comment.

[91] Copyright Owners I Initial NPRM Comments at 7.

[92] NCTA Reply NPRM Comment at 6–7, 8–11.

[93] *Id.* at 10.

[94] *E.g.,* NCTA–MPA *Ex Parte* Letter #2, at 3–4 (opposing inclusion of equipment fees); Copyright Owners II *Ex Parte* Letter #2, at 1, 2 (supporting inclusion of equipment fees); Copyright Owners II *Ex Parte* Letter #5, at 2–3 (supporting inclusion of equipment fees).

[95] NCTA–MPA *Ex Parte* Letter #4, at 4.

[96] Since 1978, the Office's regulations have incorporated the concept that equipment fees—or

Continued

charged to subscribers for the equipment necessary to access broadcast services be included in gross receipts.[97] Due to a concern that some cable operators may be uncertain as to whether the regulations' current reference to ''converter fees'' includes modern equipment fees, the NPRM proposed amended language to eliminate that confusion.

NCTA and MPA's position would eliminate equipment fees from gross receipts reported by a cable operator regardless of the amount of equipment fees that cable operators continue to collect from subscribers who choose the equipment option to access broadcast channels. The record does not support this result.

Having fully considered all comments and *ex parte* submissions, the Office concludes that, when a cable operator offers to provide video services through a free software application, but a subscriber opts to forego the software application in favor of a cable box, then that equipment is no less necessary to the subscriber's ability to receive broadcast signals than before.[98] Thus, gross receipts shall include all equipment charges collected for any equipment used to access broadcast signals. If the cable operator charges a fee for the use of a software application to be used in lieu of physical equipment used to receive broadcast services, then that fee should be included in gross receipts and the final rule so indicates.[99]

b. Broadcast Fees/Surcharges and Franchise Fees

As background, the Office is aware that many cable operators separately itemize various fees in their bills to subscribers. In particular, many include separate charges for what are often termed a ''Broadcast fee,'' or a ''Broadcast Surcharge,'' as well as a ''Franchise fee.'' Broadcast surcharges represent some portion of fees paid by cable operators to broadcasters for permission to retransmit their signals. Franchise fees represent fees paid to local governments for permission to operate a cable television service in a particular area.

The NPRM did not address broadcast fees or franchise fees. However, questions about whether these fees should be included in gross receipts were raised by commenters during the rulemaking proceeding and all parties had an opportunity to be heard on the question. The Office accordingly addresses the treatment of these fees in this final rule.

The question of whether broadcast fees should be included within the definition of gross receipts was raised by Copyright Owners I in their initial comments to the NPRM.[100] In written comments, NCTA initially expressed no opinion on broadcast surcharges.[101] However, in subsequent *ex parte* meetings with the Office, NCTA and the MPA stated that they agreed to the inclusion of franchise fees and broadcast fees in gross receipts as part of their agreement referenced above.[102] The Copyright Owners, for their part, stated that they believe broadcast fees (as well as equipment fees and franchise fees) should be included in gross receipts.[103]

After careful consideration, the Office has determined that broadcast fees (whether denominated ''broadcast fees,'' broadcast surcharges,'' or other similar descriptions) should be included in gross receipts. By their very nature, broadcast fees are charges for the service of providing broadcast transmissions. Subscribers cannot receive broadcast transmissions without paying those charges. Thus, they fit comfortably within the scope of charges that traditionally have been included in gross receipts.

The treatment of franchise fees was also raised by Copyright Owners I in their initial comments.[104] As noted above, franchise fees are fees paid to local governments for the privilege of operating a cable service franchise within the territory of that government. As stated by NCTA, franchise fees could be described as a kind of tax levied on cable operators.[105] While a tax or assessment imposed on cable operators that is passed on to all subscribers, and that subscribers must pay regardless of their tier of service, could fit within the traditional bounds of the definition of gross receipts, franchise fees do not appear to be directly linked to the service of broadcast transmissions in the same way that broadcast fees are linked. Thus, the Office concludes that, on the current record, franchise fees should not be included in gross receipts.

4. Elimination of Space F in the SOA

In the NPRM, the Office invited ''suggestions on streamlining or otherwise improving reporting practices for the section 111 license.'' [106] In response, NCTA suggests eliminating Space F, stating that the information collected ''does not relate to the provision of secondary transmissions of broadcast service and thus its collection is neither mandated by Section 111(d)(1)(A) of the Act nor relevant to cable operators' payments of royalties pursuant to the compulsory license.'' [107] Space F of the SOA, titled ''Services Other Than Secondary Transmissions: Rates,'' requires cable operators to list rate information ''with respect to all . . . services that were not covered in space E, that is, those services that are not offered in combination with any secondary transmission service for a single fee.'' [108] The Office of the Commissioner of Baseball, Public Broadcasting Service, and attorneys Dennis Lane, Philip Hochberg, John Stewart, Ann Mace, Dustin Cho, John Beiter, Brian Coleman, Matthew Maclean, and Benjamin Sternberg (collectively, ''Owner Representatives'') agreed that Space F can be eliminated [109] and Copyright Owners I commented they ''do not object'' to NCTA's proposal.[110] In light of these comments, the Office has determined that eliminating Space F would help streamline reporting practices for cable

''converter fees''—would be included in gross receipts if they were necessary to access basic secondary transmissions. 43 FR 27827, 27832 (June 27, 1978).

[97] Letter from Dorothy Schrader, Gen. Coun., to James F. Ireland, Cole, Raywid & Braverman, October 11, 1989, attached as Exhibit A to NCTA Reply NPRM Comments.

[98] *See* Copyright Owners II *Ex Parte* Letter #5, at 3.

[99] The Office notes that the record does not include information regarding whether cable operators offering subscribers a free software application for video services condition access to the application on the purchase of internet service, or other services, from the cable operator.

[100] *See* Copyright Owners I Initial NPRM Comments at 10 (urging the Office to include broadcast surcharges in gross receipts ''[b]ecause cable subscribers cannot receive broadcast signals without paying the broadcast surcharge (where imposed)'').

[101] NCTA Reply NPRM Comments at 7–8.

[102] NCTA–MPA *Ex Parte* Letter #2, at 3. *See* NCTA–MPA *Ex Parte* Letter #3, at 1–2 (noting that their agreement to include franchise fees and broadcast fees in gross receipts was predicated on an overall settlement of the other issues in the rulemaking).

[103] Copyright Owners II *Ex Parte* Letter #2, at 2.

[104] *See* Copyright Owners I Initial NPRM Comments at 10 (urging the Office to include franchise in gross receipts ''[b]ecause franchise fees are part of the total amount cable subscribers pay to receive broadcast signals'').

[105] *See* NCTA Reply NPRM Comments at 7 (describing the franchise fee as ''an indirect tax for rights-of-way'').

[106] 82 FR at 56927.

[107] NCTA Initial NPRM Comment at 10; NCTA *Ex Parte* Letter Jan. 24, 2019 at 2; NCTA & MPA *Ex Parte* Letter May 22, 2020 at 8 (''[T]he Office should not only delete Space F (and all references thereto) from the SOA forms, but also remove Section 201.17(e)(8) from its rules.'').

[108] Short Form SOA at 2, Space F; Long Form SOA at 2, Space F. *See* 37 CFR 201.17(e)(8).

[109] Owner Representatives *Ex Parte* Letter Aug. 15, 2019 at 2.

[110] Copyright Owners I Reply NPRM Comment at 6. *See* NCTA & MPA *Ex Parte* Letter May 22, 2020 at 10 (stating that commenting parties agree Space F can be eliminated); *see* NCTA & MPA *Ex Parte* Letter May 20, 2020 Ex. at 3 (same).

operators. The final rule thus eliminates the regulatory provision requiring remitters to provide information regarding ''Services Other Than Secondary Transmissions: Rates,'' [111] and Space F will be removed from the cable SOA forms.[112]

B. Definition of Phrase ''Cable System''

The Office has maintained a consistent interpretation of the statutory definition of a cable system for many years, *i.e.,* that cable systems are limited to systems providing only localized retransmissions of limited availability and that internet-based retransmission services are excluded from the section 111 compulsory license. This interpretation has been included in testimony before Congress, as well as policy reports issued by the Office.[113] It also has been accorded deference by courts examining whether satellite carriers and internet-based services are eligible for the section 111 license.[114]

In the NPRM, the Office proposed amending its regulatory definition of the phrase ''cable system'' to specifically reflect this position.[115] In their comments, stakeholders expressed reservations about the proposed change. Copyright Owners I, while agreeing that the proposed language comported with the Office's longstanding interpretation of the statute, stated that they ''do not believe that an amendment is needed to give full effect to that consistent interpretation.'' [116] NCTA also opposed implementation of the proposed change. It stated that the proposed change ''may inadvertently create a new target for [people] to try to invent around in ways not intended by the Copyright Office.'' [117]

After reviewing the comments to the NPRM, the Office concludes that, while its interpretation of section 111 has not changed, amendment of the phrase ''cable system'' in its regulations at this time may create unintended confusion regarding the Office's position. To avoid any unintended consequences, it therefore has decided not to memorialize its longstanding interpretation in the regulations as part of this rulemaking.

C. Interpretation of Community and Reporting of Area Served (Space D)

1. Cable Headend Location

Remitters are currently required to identify only the community or communities in which they operate and not the location of the headend(s) serving those communities.[118] While the Program Suppliers' original petition requested that Space D be revised to require cable operators to identify the location of each headend and the specific communities served from that headend,[119] the Office declined to include this change in the NPRM, concluding that it was not clear that artificial fragmentation by cable systems seeking to avoid paying a higher royalty rate was a pressing concern.[120] In response to the NPRM, Copyright Owners I and NCTA agreed that headend location information is not necessary to be reported on cable SOAs.[121] Accordingly, the final rule does not require remitters to include headend location information in Space D.

2. County Information

The Office's regulations currently require a cable operator to report the name of the community or communities served by its cable system in Space D of the SOA.[122] A cable operator must identify the communities it serves, listing the ''city or town'' and ''state'' served, but not the county in which the given community is located (although some operators report counties on a voluntary basis). In response to a request by Program Suppliers, the Office proposed revising Space D to require ''county'' information, noting that a regulatory change would not be necessary to implement this update to the SOA, but sought comment on whether this proposed change remained desirable to stakeholders.[123] Copyright Owners I supported this proposed change,[124] and AT&T and NCTA stated that they did not object.[125] Accordingly, the Office will adopt this change by updating the instructions for filling out the SOA to require county information be included.

3. Definition of the Term ''Community''

Under the Copyright Act and the Office's regulations, two or more cable systems constitute a single cable system for purposes of section 111 if, as relevant here, they are under common ownership or control and are located in the same or ''contiguous communities.'' [126] Where common ownership of cable systems is established, defining the ''community'' served is important to determine whether two or more cable facilities operate in ''contiguous communities,'' and whether those facilities should file as a single cable system, preventing artificial fragmentation of large cable systems into smaller systems and avoiding the higher royalty payments that Form 3 cable systems [127] pay under section 111.[128] The Office's existing regulations state that a cable system's ''community,'' for purposes of section 111, is the same geographic area as that specified under the definition of ''community unit'' as defined in the FCC's rules and regulations.[129] FCC regulations define ''community unit'' as ''[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or

[111] *See* 37 CFR 201.17(e)(8).

[112] As noted above, cable operators may continue to use the Office's existing SOA forms until the Office's new forms without Space F have been made publicly available. Until the new SOA forms are provided, cable operators need not complete Space F.

[113] *See, e.g.,* Register of Copyrights, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* 97–99 (1997), *https://www.copyright.gov/reports/study.pdf; Copyrighted Webcast Programming on the Internet: Hearing Before the H. Subcomm. on Courts and Intell. Prop.,* 106th Cong. 5–6 (2000) (statement of Marybeth Peters, Register of Copyrights and Dir., U.S. Copyright Office); Register of Copyrights, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report* 193–94 (2008), *http://www.copyright.gov/reports/section109-final-report.pdf* (''Section 109 Report''); Register of Copyrights, *Satellite Home Viewer Extension and Localism Act Section 302 Report* 47–49 (2011), *https://www.copyright.gov/reports/section302-report.pdf.*

[114] *E.g., Fox Television Stations, Inc.* v. *Aereokiller, LLC,* 851 F.3d 1002, 1013–15 (9th Cir. 2017) (finding the Office's view concerning the ineligibility of internet services under section 111 to be longstanding, consistent, and ''persuasive'' and deferring to the Office's interpretation); *WPIX, Inc.* v. *ivi, Inc.,* 691 F.3d 275, 283–84 (2d Cir. 2012) (deferring to the Office's interpretation regarding internet-based services and eligibility for section 111 license); *Satellite Broad. & Commc'ns Ass'n of Am.* v. *Oman,* 17 F.3d 344, 346–48 (11th Cir. 1994) (upholding the Office's determination that satellite carriers are ineligible for section 111 license).

[115] 82 FR at 56931–32; *see, e.g., Fox Television Stations, Inc.* v. *Aereokiller, LLC,* 851 F.3d 1002, 1007 n.1 (9th Cir. 2017) (noting that seven other federal courts held that ''internet-based transmission services'' did not qualify as a ''cable systems'' under the Copyright Act); *WPIX, Inc.* v. *ivi, Inc.,* 691 F.3d 275, 276 (2d Cir. 2012); *Fox Television Stations, Inc.* v. *FilmOn X, LLC,* 150 F. Supp. 3d 1, 7 (D.D.C. 2015).

[116] Copyright Owners I Initial NPRM Comments at 11.

[117] NCTA Initial NPRM Comments at 19.

[118] *See* 37 CFR 201.17(e)(4); Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

[119] Petition at 10–11.

[120] 82 FR at 56932.

[121] NCTA Initial NPRM Comments at 20; Copyright Owners I Initial NPRM Comments at 14.

[122] 37 CFR 201.17(e)(4).

[123] 82 FR at 56933.

[124] Copyright Owners I Initial NPRM Comments at 14.

[125] NCTA Initial NPRM Comments at 21; AT&T Initial NPRM Comments at 8.

[126] 17 U.S.C. 111(f)(3); 37 CFR 201.17(b)(2).

[127] Form 3 cable systems are cable systems that use the Long Form SOA.

[128] *See* 43 FR 958 (Jan. 5, 1978) (''[T]he legislative history of the Act indicates that the purpose of this sentence [in section 111(f)] is to avoid the artificial fragmentation of cable systems.'').

[129] 37 CFR 201.17(e)(4); *see also* Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).'' [130]

In their original petition, Program Suppliers had requested that the Office amend the regulatory definition of ''community'' so that a cable operator's ''franchise area'' would be the *de facto* regulatory boundary for defining communities, rather than the FCC's community unit definition.[131] However, based on comments received in response to the NOI, the Office explained in the NPRM that it was not proposing to replace the regulatory definition, because ''the facts and the law [did] not support replacing the community unit definition with a franchise area definition,'' [132] noting that it was not aware of a practice of fragmentation, but inviting public comments on whether this issue was still significant to stakeholders.[133] In its comments, NCTA stated that the Office was correct in its decision not to amend the regulations to reflect a franchise area,[134] and Copyright Owners I did not object.[135] Accordingly, the Office declines to amend the regulatory definition of the term ''community.

D. Grade B Contour Versus Noise-Limited Contour

In the NPRM, the Office noted that parts of the Long Form SOA referencing the ''Grade B contour'' appeared to be obsolete given the advent of digital television signals and the new ''noise-limited service contour'' [136] standard. It proposed two changes described below to delete these references.

As background, section 111 defines the ''local service area of a primary transmitter.'' The definition establishes the difference between ''local'' and ''distant'' signals and ''therefore the line between signals which are subject to payment under the compulsory license [under section 111] and those that are not.'' [137] It originally relied on an FCC construct, referred to as the ''Grade B contour'' construct, used to determine the local service area of certain signals. Adopted in 1976, the Grade B contour applies to analog television stations.[138] In connection with the advent of digital television signals, the FCC has established a new ''noise-limited service contour'' [139] standard. In 2010, as part of STELA, the definition of local service area in section 111 was amended to incorporate this new standard.[140]

Under the FCC's old ''market quota'' rules, which were incorporated by reference into section 111, a cable operator could carry a certain number of distant signals based upon a complex scheme involving the type of television market and signal available. A cable operator, however, could carry more signals than its market quota of distant signals if the station was considered ''permitted'' by the FCC's 1976-era rules. The concept of ''permitted'' stations was imported into the section 111 license. Under section 111, an operator that carries a non-permitted signal above its market quota is generally subject to a 3.75% fee for carriage of that signal, in lieu of the minimum royalty rate.[141] There are several bases of ''permitted'' carriage, however, for which retransmission will not trigger the 3.75% fee. One of these bases—basis ''G''—includes carriage of commercial UHF stations within a Grade B contour.[142] On cable SOAs, permitted signals, including those under basis ''G,'' must be reported in Part 6, Block B, or be subject to the 3.75% fee calculation in Part 6/Block C.[143]

In the NPRM, the Office explained that, post-STELA, this area would include the area within the noise limited service contour; [144] thus, the noise limited service contour would be the proper standard by which to measure the reach of digital television signals with respect to the section 111 license, including digital UHF signals.[145] It proposed revising Part 6, Block B of the Long Form SOA which asks for information related to ''permitted'' UHF signals carried by a cable operator for purposes of calculating royalties paid under a 3.75% fee. The NPRM's proposal would eliminate the option in Block B of Part 6 on the cable SOAs for commercial UHF stations within a Grade B contour (referred to as permitted basis ''G'').[146] Because royalty rates under the section 111 license are calculated based on the ''secondary transmission of any non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter* of such programming,'' [147] and because any digital signals within the noise-limited service contour are ''local'' and thus are not subject to the section 111 royalty rate, the Office concluded that ''there is no need to treat any station within the noise limited contour as 'permitted,' because locally retransmitted stations do not count against the market quota in the first place.'' [148]

In addition, the Office noted that permitted basis ''G'' in Part 6/Block B is rarely, if ever, used, and that in the few cases where cable operators have reported the permitted basis of carriage category ''G,'' cable operators ''may have used the noise-limited contour (for digital signals) interchangeably with the Grade B contour (for analog signals) because they historically reported 'G' in the all-analog world (prior to the mandated FCC digital conversion in 2009), and continue to report the 'G' permitted basis out of habit.'' [149]

Second, the Office invited public comment on whether Part 7, Block B of the cable SOA—which allows for calculation of a syndicated exclusivity surcharge for the carriage of any commercial VHF station that places a Grade B contour, in whole or in part, over the cable system that would have been subject to the FCC's syndicated exclusivity rules in effect on June 24, 1981—should be amended, and whether, more generally, the Office's related regulations should be amended to remove references to a Grade B contour.[150] It explained that based on database queries of submitted SOAs, ''the last time Part 7 of the cable SOA [had been] used (*i.e.,* Computation of the Syndicated Exclusivity Charge) was in 2013, on a single SOA.'' [151]

The comments received in response to these proposed changes were generally positive. While NCTA initially expressed concern that the Office's proposal ''might have more significant substantive ramifications,'' such as eliminating the ability to rely on a station's Grade B contour in assessing local and distant signals, it later acknowledged that the Office's

[130] 47 CFR 76.5(dd).

[131] Petition at 19.

[132] 82 FR at 56933.

[133] *Id.*

[134] NCTA Initial NPRM Comments at 20.

[135] Copyright Owners I Initial NPRM Comments at 14. (In their initial comments, the Copyright Owners included the MPA.)

[136] 82 FR at 56934.

[137] H.R. Rep. No. 94–1476, at 99 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5714.

[138] 17 U.S.C. 111(f)(4).

[139] 82 FR at 56934.

[140] STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

[141] *See* 37 CFR 387.2.

[142] *See* Long Form SOA at 13.

[143] *See id.* All cable systems filing Long Form SOAs must pay at least the minimum fee which is 1.064% of gross receipts. The cable system pays either the minimum fee or the sum of the base rate fee and the 3.75% fee, whichever is larger, and a Syndicated Exclusivity Surcharge, as applicable. Long Form SOA at 10.

[144] *See* STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

[145] 82 FR at 56934.

[146] *Id.*

[147] 17 U.S.C. 111(f)(5) (emphasis added).

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

proposed changes ''would only eliminate from the rules and the Form SA3 a handful of specific Grade B references, to which NCTA is not opposed.'' [152] NCTA and MPA supported ''eliminat[ing] references to the 'Grade B contour' in Sections 201.17(i)(l)(ii) and 201.17(i)(2)(ii) and, with respect to the DSE Schedule in Form SA3, references to the 'Grade B contour' in Parts 7 and 9 (and the instructions for those Parts) and the 'G' category in Part 6, Block B.'' [153] Both commenters asked, however, for the Office to clarify that ''in the unlikely event a cable operator needs to continue relying on a station's Grade B contour to establish its 'permitted' status, the operator may report that reliance under the existing 'O—Other' designation in Part 6, Block B.'' [154] For their part, Copyright Owners I supported eliminating basis ''G'' in Part 6 and ''amend[ing] Part 7 (and the accompanying regulations) to remove references to a Grade B contour.'' [155]

After carefully considering these comments, the Office will eliminate the permitted basis ''G'' in Part 6/Block B on the cable SOAs (*i.e.,* commercial UHF stations within a Grade B contour), and if a cable operator needs to continue relying on a station's Grade B contour to establish its ''permitted'' status, it may report that reliance under the existing ''O—Other'' designation. The Office will also eliminate references to the ''Grade B contour'' in §§ 201.17(i)(l)(ii) and 201.17(i)(2)(ii) and, with respect to the DSE Schedule in Form SA3, references to the ''Grade B contour'' in Parts 7 and 9 (and the instructions for those Parts).

E. Changes to SOA Due to Copyright Royalty Board's Rule Relating to the Retransmission of Sports Programming

The NPRM noted that in response to the repeal of the FCC's Sports Blackout Rule, the CRB had issued a notice of proposed settlement and proposed rule to require covered cable systems to pay a separate per-telecast royalty (a ''Sports Surcharge'') in addition to the other royalties that they must pay under section 111.[156] The Office stated that ''[a]ssuming the CRB's rule is adopted, the Office intends to amend its cable SOA forms to account for the new Sports Surcharge for semi-annual accounting periods,'' and that ''[n]o amendments to the Office's regulations [would be] needed to accommodate this change.'' [157]

Effective January 1, 2019, the CRB adopted a final rule under which certain cable systems may be required to pay the Sports Surcharge.[158] To facilitate Sports Surcharge payments, the Office created a Sports Surcharge Addendum for remitters to complete, if necessary, in addition to their SOAs.[159] Because no regulatory amendments were necessary to implement the Sports Surcharge Addendum, the Office considers this issue closed for purposes of this rulemaking.

F. Removing Outdated References to STELA

In the NPRM, the Office proposed amending § 201.17 by deleting outdated references to STELA, and adding language directing remitters to contact the Licensing Division for instructions should they need to file SOAs for accounting periods further back than the last five years.[160] The Office received no comments on this proposal. Accordingly, the proposed amendments are included in the final rule.

G. Technical Amendments

The NPRM proposed several technical amendments. Because certain regulatory provisions are duplicative of information provided on cable operator SOA forms and/or on the Office's website, the proposed rule would remove these duplicative provisions. In addition, the Office's current regulations instruct which information must be provided as part of the electronic funds transfer (''EFT'') to pay royalty fees. The Office proposed removing this language and incorporating it into the instruction for the SOA forms. There were no comments on either of these proposed changes. The final rule will include these changes.

The final rule makes additional nonsubstantive changes to § 201.17 of the CFR. It clarifies the introductory language in § 201.17(e), which is not intended as a substantive change, and corrects references in § 2017.17(i)(3), and (k)(3). It reorders parts of § 201.17(c), and adopts the technical changes of the proposed rule, by adding provisions to give guidance to remitters when a cable operator ceases to operate or when a cable operator is sold during an accounting period.

Finally, the Office is developing a new enterprise information technology system (the ''Enterprise Copyright System'' or ''ECS'') that will improve its administration of the section 111 license. To accommodate the planned technological improvements and integration into ECS, the final rule modifies language in § 201.17(d) to make clear that remitters must use the Statement of Account forms provided by the Office on its website when the new forms have been adopted. The final rule also updates the references to various provisions in § 201.17 that are contained in § 201.16, to conform to the changes being made to § 201.17, and makes technical changes to § 201.17 to correct issues within the regulation and update references to other regulations.

These changes are intended to update the references and improve the readability and understanding of existing regulations and do not represent substantive changes in policy.

IV. Reporting Practices—Cable, Satellite, and DART

The NPRM proposed a number of regulatory changes, detailed below, relating to cable SOA reporting practices that are also pertinent to the filing of SOAs for other statutory licenses. After reviewing all comments, the Office is issuing a final rule amending certain reporting requirements for cable operators (under § 201.17), satellite

[152] NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9; *see* NCTA Initial NPRM Comment at 21–23; NCTA Reply NPRM Comment at 15. *See also* Copyright Owners I Reply NPRM Comment at 6–7 (noting that contrary to NCTA's initial interpretation, the Office did not propose ''eliminating use of the Grade B contour in determining whether a signal is distant or local for Section 111 purposes,'' but rather proposed ''only two discrete, very limited places where the Grade B contour reference would be eliminated'').

[153] NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9.

[154] *Id.* at 9 n.41.

[155] Copyright Owners I Reply NPRM Comment at 6. *See* NCTA & MPA *Ex Parte* Letter May 20, 2020 Ex. at 3 (stating none of the commenting parties opposed ''the Office's proposal to eliminate references to the use of the Grade B contour in the SOA, subject to the clarification that cable operators may continue to rely on the Grade B contour to determine the status of a broadcast signal to the same extent as is currently allowed''); NCTA & MPA *Ex Parte* Letter May 22, 2020 at 9 (similar).

[156] NPRM, 82 FR at 56934–35; *Adjustment of Cable Statutory License Royalty Rates,* 82 FR 24611 (May 30, 2017).

[157] NPRM, 82 FR at 56935.

[158] 83 FR 62714 (Dec. 6, 2018). *See* 37 CFR 387.2(e). The Sports Surcharge is calculated separately for each community in which a cable system carried one or more Sports Surcharge triggering programs during an accounting period (*i.e.,* live, non-network broadcasts of sports events on a distant television station carried by the cable system that would have been subject to blackout under the FCC's sports exclusivity rule prior to its repeal in 2014 and that meet certain other requirements established by the CRB). To calculate the Sports Surcharge, the system multiplies the gross receipts attributable to each such community by the number of Sports Surcharge triggering programs carried in the community by the Sports Surcharge rate of 0.025 percent (.00025). 37 CFR 387.2(e).

[159] The Sports Surcharge Addendum is available through *pay.gov* at *www.copyright.gov/licensing/sec_111.html,* or directly at *pay.gov/public/form/start/584643809.* Instructions for the Sports Surcharge Addendum are available at *www.copyright.gov/licensing/111/sports-addendum-instructions.*

[160] 82 FR at 56935.

carriers (under § 201.11), and digital audio recording equipment manufacturers and importers (under §§ 201.27 and 201.28), where applicable, so that there are parallel requirements for all three licenses in the Office's regulations. The final rule also deletes references in the proposed rules to payment by ''a single'' EFT to reflect the elimination of that requirement in 2018.[161] In addition, each of the following changes are reflected in the regulatory language below.

A. Closing Out Statements of Account

To streamline the administrative process and encourage timely responses to Office inquiries, the NPRM proposed closing out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence with the Office. After the SOA is closed, it will be placed with other publicly available SOA records. At that point, a cable operator wishing to submit a reply or pay additional royalties or make necessary corrections will need to file an amended SOA along with a filing fee as prescribed in 37 CFR 201.3(e). To be clear, operators failing to respond within the prescribed 90-day window will forfeit any potential refund of an overpayment associated with any issue with the SOA identified by the Office in its correspondence.

AT&T and Copyright Owners I supported this proposal.[162] There were no other comments on this issue.[163] After reviewing all comments, the Office adopts these changes in the final rule.

B. Royalty Refunds

The NPRM proposed that royalty refunds for amounts of $50.00 or less would issue only where the refund is specifically requested before the SOA is closed and made available for public inspection. It further proposed that, if a refund is not requested before the SOA is closed, the amount will be added to the relevant royalty pool. The Office proposed harmonizing this practice across the regulations affecting royalty refunds for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

AT&T and Copyright Owners I submitted comments agreeing with these proposals.[164] There were no other comments on this issue.[165] Accordingly, these changes are adopted into the final rule.

C. Payment of Supplemental Royalty Fees and Filing Fees by EFT

The NPRM proposed that all payments of supplemental royalty fees and filing fees by cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers be made only by EFT.[166] In its comments, AT&T supported the Office's proposal.[167] NCTA was generally supportive, but suggested that operators filing Form 1 and Form 2 be allowed to request a waiver of the EFT requirement.[168] The Office's records indicate that almost no Form 1 and Form 2 cable operators have insisted on remitting payment by other than EFT. Moreover, the use of EFT has proven to be a more efficient and effective means for the Office to receive and invest payments than payment by check or other means. Therefore, in the final rule, the Office has decided to retain the original proposal and require all payments to be made by EFT.

D. Interest Assessment

In the NPRM, the Office proposed harmonizing the regulations relating to the assessment of interest for late payments or underpayments of royalties among cable operators, satellite carriers, and digital audio equipment manufacturers and importers, including the specification of the relevant Current Value of Funds Rate. Interest payments shall not be required if the interest charge is less than $5.00.

Only NCTA and AT&T submitted comments in response to this proposal and supported the Office's proposals.[169] As there were no other comments on this proposal, the final rule adopts the proposed changes.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

■ 2. Amend § 201.11 by:
■ a. Revising paragraph (f)(1).
■ b. Revising paragraph (h)(3)(iv).
■ c. Adding paragraph (h)(3)(vii).
■ d. Adding paragraphs (h)(5) and (6).

The revisions and additions read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(f) * * *

(1) All royalty fees, including supplemental royalty payments, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Satellite carriers must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(h) * * *

(3) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars ($50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars ($50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (h)(3)(i) of this section.

* * * * *

(5) Royalty fee payments submitted as a result of late or amended filings shall

[161] *See* 83 FR 51840 (Oct. 15, 2018).

[162] AT&T Initial NPRM Comments at 8; Copyright Owners I Initial NPRM Comments at 14; Copyright Owners I Reply NPRM Comments at 3.

[163] In an *ex parte* letter, NCTA and MPA listed this as an undisputed issue. NCTA–MPA *Ex Parte* Letter #1, attachment at 3.

[164] AT&T Initial NPRM Comments at 8; Copyright Owners I Initial NPRM Comments at 14; Copyright Owners I Reply NPRM Comments at 3.

[165] *See* NCTA–MPA *Ex Parte* Letter #1, attachment at 3 (all parties support this proposal).

[166] 82 FR at 56936.

[167] AT&T Initial NPRM Comments at 9.

[168] NCTA Initial NPRM Comments at 24.

[169] *Id.* at 23; AT&T Initial NPRM Comments at 9. *See* NCTA–MPA *Ex Parte* Letter #1, attachment at 3 (stating that all parties agree to the Office's proposal).

include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing and viewing in commercial establishments occurring within that accounting period. The accrual period shall end on the date the full payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department's website and published in the **Federal Register**, in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

§ 201.16 [Amended]

■ 3. Amend § 201.16 by:
■ a. Removing ''201.17(m)'' from paragraph (b)(8), and adding in its place ''201.17(l)'';
■ b. Removing ''§ 201.17(e)(9)(iv)'' from paragraph (e)(2), and adding in its place ''§ 201.17(e)(4)(iv)'';
■ c. Removing ''§ 201.17(e)(9)(iv)'' from paragraph (h)(1), and adding in its place ''§ 201.17(e)(4)(iv)'';
■ d. Removing ''201.17(m)'' from paragraph (j)(1), and adding in its place ''201.17(l)''; and
■ e. Removing ''201.17(m)(4)(i)'' and adding in its place ''201.17(l)(4)(i)'' and removing ''201.17(m)(4)'' and adding in its place ''201.17(l)(4)'' in paragraph (j)(2).

■ 4. Amend § 201.17 by:
■ a. Revising paragraph (b)(1);
■ b. Revising the heading to paragraph (c) and paragraph (c)(3);
■ c. Redesignating paragraph (c)(4) as paragraph (c)(5) and adding a new paragraph (c)(4);
■ d. Revising paragraph (d) and the introductory text of paragraph (e);
■ e. Removing paragraphs (e)(1), (2), (3), (4), (8), (10), (12), and (13);.
■ f. Redesignating paragraphs (e)(5), (6), (7), (9), (11), and (14) as paragraphs (e)(1) through (6), respectively;
■ g. Removing '' ''Secondary Transmission Service: Subscribers and Rates'','' and adding in its place '' ''Secondary Transmission Service: Subscribers and Rates,'' '' in the newly redesignated paragraph (e)(2);
■ h. Adding ''or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations'' after the word ''Statement'' in the newly redesignated paragraph (e)(2)(iii)(A);
■ i. Removing '' ''Gross Receipts'','' and adding in its place '' ''Gross Receipts,'' '' in the newly redesignated paragraph (e)(3) introductory text;
■ j. Removing ''Television'','' and adding in its place ''Television,'' '' and removing ''(e)(11)'' and adding in its place ''(e)(5)'' in the newly redesignated paragraph (e)(4) introductory text;
■ k. Revising the newly redesignated paragraphs (e)(4)(iv) and (vi);
■ l. Removing ''(e)(9), paragraphs (v) through (viii) of this section'' and adding in its place ''paragraphs (e)(4)(v) through (viii) of this section'' in newly redesignated paragraph (e)(4)(ix);
■ m. Revising newly redesignated paragraphs (e)(5) introductory text, (e)(5)(i), and (e)(5)(ii) introductory text;
■ n. Removing paragraphs (g)(2) and (4);
■ o. Redesignating paragraph (g)(3) as paragraph (g)(2);
■ p. Revising paragraphs (i)(1)(ii) and (i)(2)(ii);
■ q. Removing ''37 CFR 308.2(c)'' from paragraph (i)(3) introductory text and adding in its place ''37 CFR 387.2(c)'';
■ r. Revising paragraphs (k)(1) and (2);
■ s. Removing ''(i)(1)'' from paragraph (k)(3) and replacing it with ''(k)(1)'';
■ t. Removing ''satellite carrier'' and adding in its place ''cable operator'' in paragraph (k)(4).
■ u. Revising paragraph (l)(1);
■ v. Removing ''(m)(4)'' and adding in its place ''(l)(4)'' in paragraph (l)(2) introductory text;
■ w. Removing '', for any reason except that mentioned in paragraph (m)(2)(iii) of this section,'' from paragraph (l)(2)(ii);
■ x. Removing ''(m)(2)'' and adding in its place ''(l)(2)'' in paragraph (l)(4) introductory text;
■ y. Removing ''(m)(2)(i)'' and adding in its place ''(l)(2)(i)'' in paragraph (l)(4)(iii)(A);
■ z. Removing ''(m)(2)(ii)'' and adding in its place ''(l)(2)(ii)'' in paragraph (l)(4)(iii)(B);
■ aa. Revising paragraph (l)(4)(iv);
■ bb. Removing ''(m)'' and adding in its place ''(l)'' and removing ''(e)(14)'' and adding in its place ''(e)(6)'' in paragraph (l)(4)(v);
■ cc. Removing ''(m)(4)(i)'' and adding in its place ''(l)(4)(i)'' in paragraph (l)(4)(vi);
■ dd. Adding paragraph (l)(4)(vii);
■ ee. Redesignating paragraph (l)(5) as (l)(7);
■ ff. Adding new paragraph (l)(5) and paragraph (l)(6); and
■ gg. Removing ''(m)'' and adding in its place ''(l)'' in newly redesignated paragraph (l)(7).

The revisions and additions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b) * * *

(1) Gross receipts for the ''basic service of providing secondary transmissions of primary broadcast transmitters'' include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals. For these purposes, the full amount of such service fees includes separately itemized fees, such as broadcast fees or broadcast surcharges, that are directly related to the provision of basic service and that a subscriber is required to pay to the cable operator in order to receive secondary transmissions of television or radio broadcast signals. Gross receipts also include fees for non-broadcast tier(s) of services if such purchase is required to obtain tiers of services with broadcast signals, and fees for any other type of equipment, device, or software necessary to receive broadcast signals that is supplied by the cable operator, even if the cable operator offers to provide services through a free software application. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, franchise fees, separate charges for security, alarm or facsimile services, charges for late

payments, or charges for pay cable or other program origination services: Provided that, the origination services are not offered in combination with secondary transmission service for a single fee. In addition, gross receipts shall not include any fees collected from subscribers for the sale of internet services or telephony services when such services are bundled together with cable service; instead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product.

* * * * *

(c) *Submission of Statement of Account, accounting periods, and deposit.*

* * * * *

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office except for cases where the cable system has ceased operation before the account period closes. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(4) A cable system that changes ownership during an accounting period is obligated to file only a single Statement of Account at the end of the accounting period. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

* * * * *

(d) *Statement of Account forms and submission.* Cable systems shall submit each Statement of Account using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. To file a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

(e) *Contents.* In addition to the information requested by the instructions for completion and submission provided on the Office's website or the form itself, each Statement of Account shall contain the following information:

* * * * *

(4) * * *

(iv) A designation as to whether that primary transmitter is a ''network station,'' an ''independent station,'' or a ''noncommercial educational station.''

* * * * *

(vi) If that primary transmitter is a ''distant'' station, a specification of whether the signals of that primary transmitter are carried:

(A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or

(B) On any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

* * * * *

(5) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under:

(i) Rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or

(ii) Rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

* * * * *

(i) * * *

(1) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

(2) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

* * * * *

(k) * * *

(1) All royalty fees, including supplemental royalty fees, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Cable systems must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form and on the Office's website.

(2) A copy of the remittance advice shall be attached to the Statement(s) of Account. In addition, if payment is not made by *pay.gov*, a copy of the remittance advice shall be emailed or sent by facsimile to the Licensing Division.

* * * * *

(l) * * *

(1) To amend or request a refund relating to a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

* * * * *

(4) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, and all requests that a supplemental royalty fee payment be received for deposit under this paragraph (l) must be accompanied by a remittance in the full amount of such fee, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars ($50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part

of the royalty fee. A request for a refund payment in an amount of over fifty dollars ($50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the cable system owner named in the Statement of Account.

* * * * *

(5) Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department website, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

■ 5. Amend 201.28 by:
■ a. Revising paragraph (e)(7);
■ b. Revising paragraph (h)(1);
■ c. Revising paragraph (j)(3)(v);
■ d. Adding paragraph (j)(3)(viii); and
■ e. Adding paragraphs (j)(4) and (5).

The revisions and additions read as follows:

§ 201.28 Statement of Account for digital audio recording devices or media.

* * * * *

(e) * * *

(7) *Oath and signature.* (i) Each Statement of Account shall include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of an authorized officer, principal, or agent of the filing party. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the quarterly Statement of Account;

(B) The date the document is signed;

(C) The following certification:

I, the undersigned, hereby certify that I am an authorized officer, principal, or agent of the ''manufacturing or importing party'' identified in Space B.

(ii) Penalties for fraud and false statements are provided under 18 U.S.C. 1001 *et seq.*

* * * * *

(h) * * *

(1) All royalty fees, including supplemental royalty fee payments, must be paid by electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Remitters must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(j) * * *

(3) * * *

(v) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(viii) A refund payment in the amount of fifty dollars ($50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars ($50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the manufacturing or importing party named in the Statement of Account.

(4) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as posted on the Treasury Department website, in effect on the first business day after the close of the filing deadline for that accounting period. Manufacturers or importing parties wishing to obtain the interest rate for a specific accounting period may do so by consulting the **Federal Register** for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars ($5.00).

(5) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

Dated: December 3, 2024.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2024–28984 Filed 12–11–24; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2022–0771; FRL–11912–02–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (22–4.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for certain chemical substances that were