that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a total economic impact of more than $6.1 million, which is the maximum additional amount of fees that HUD has determined would be collected if the fee is raised to $100 per label.

By annual appropriations acts, Congress requires HUD to collect fees from manufacturers of manufactured housing to ensure the annual appropriation that HUD provides in a given fiscal year. In addition to the authority to set label fees, the reports accompanying HUD's recent annual appropriations acts reflect strong Congressional encouragement for HUD to respond to the annual appropriations act authority to modify the label fees to obtain additional funding to support the manufactured housing program. The per-unit fee would remain as has always been the case to be proportional in its impact, with greater collections from larger manufacturers and less collections from smaller manufacturers.

HUD has concluded, generally, that, as is often the case with increased fees placed on manufacturers of products used by consumers, the fee increase will be passed through to consumer, thereby minimizing the impact on manufacturers large and small. If the cost of the fee is passed on to the consumer, the purchase price of a manufactured home would increase, and placements of new manufactured homes would decrease slightly below currently forecasted levels. If manufacturers absorb the cost, however, the effect of the increase would result in lower profits for the manufacturers and sales would remain unchanged. In either scenario, this change in fee collections would represent a transfer to tax payers from manufacturers of manufactured housing or consumers purchasing new manufactured housing, since the increased fee collections will replace funds collected through federal tax collections.

For these reasons, HUD submits that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's program responsibilities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 3284 as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

■ 1. The authority citation for 24 CFR part 3284 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5419, and 5424.

■ 2. Revise § 3284.5 to read as follows:

§ 3284.5 Amount of fee.

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of $100 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

Dated: April 29, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–10129 Filed 5–1–14; 8:45 am]

BILLING CODE 4210–67–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. 14–CRB–0005 (RM)]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges seek written comments on two petitions for rulemaking seeking amendments to the regulations for filing notice of use and the delivery of records of use of sound recordings under two statutory licenses of the Copyright Act.

DATES: Comments are due no later than June 2, 2014. Reply comments are due no later than June 16, 2014.

ADDRESSES: The Copyright Royalty Board (CRB) prefers that comments and reply comments be submitted electronically to *crb@loc.gov.* In the alternative, commenters shall send a hard-copy original, five paper copies, and an electronic copy on a CD either by U.S. mail or hand delivery. The CRB will not accept multiple submissions from any commenter. Electronic documents must be in either PDF format containing accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). Commenters MAY NOT submit comments and reply comments by an overnight delivery service other than the U.S. Postal Service Express Mail. If commenters choose to use the U.S. Postal Service (including overnight delivery), they must address their comments and reply comments to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If commenters choose hand delivery by a private party, they must direct their comments and reply comments to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If commenters choose delivery by commercial courier, they must direct

their comments and reply comments to the Congressional Courier Acceptance Site located at 2nd and D Street NW., Washington, DC, on a normal business day between 8:30 a.m. and 4 p.m. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 2006, the Copyright Royalty Judges (Judges) issued interim regulations published in the **Federal Register** for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act. 71 FR 59010.[1] The goal of those interim regulations was to establish format and delivery requirements for reports of use so that royalty payments to copyright owners pursuant to the section 112 and 114 licenses could be made from April 1, 2004, forward based upon actual data on the sound recordings transmitted by digital audio services.

On December 30, 2008, the Judges published a notice of proposed rulemaking (NPRM) setting forth proposed revisions to the interim regulations adopted in October 2006. 73 FR 79727. The most significant revision proposed by the Judges was to expand the reporting period to implement year-round census reporting. Further, on April 8, 2009, the Judges published a notice of inquiry (NOI) to obtain additional information concerning the likely costs and benefits stemming from the adoption of the proposed census reporting provision as well as information on any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities. 74 FR 15901.

Following a notice and comment process, the Judges published a final rule on October 13, 2009, amending the interim regulations and establishing requirements for census reporting for all but those broadcasters who pay no more than the minimum fee for their use of the license. 74 FR 52418. The final regulations established requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use were to be kept and made available by entities of all sizes performing sound recordings. *See, e.g.,* 17 U.S.C. 114(f)(4)(A). As with the interim regulations adopted in 2006, the final regulations adopted in 2009 represented baseline requirements. In other words, digital audio services remained free to negotiate other formats and technical standards for data maintenance and delivery and to use those in lieu of regulations adopted by the Judges, upon agreement with the Collective. The Judges indicated that they had no intention of codifying these negotiated variances in the future unless and until they come into such standardized use as to effectively supersede the existing regulations.[2]

II. Petition for Clarification and Petition for Rulemaking

On October 28, 2009, College Broadcasters, Inc. (CBI), American Council on Education and Intercollegiate Broadcasting Systems, Inc. (collectively, Petitioners) made a motion with the Judges for clarification with respect to one issue raised by the final regulation. Petitioners noted that the final regulation exempted minimum-fee webcasters that are FCC-licensed broadcasters from the census reporting requirement, but did not appear to exempt minimum-fee educational stations that are not FCC-licensed broadcasters from the same requirement. *See Joint Petition for Clarification* at 2–3 (Oct. 28, 2009) (*Joint Petition*). Petitioners asked the Judges to ''clarify'' that the exemption extended to minimum fee unlicensed educational stations.[3] *Id.* at 4.

The Judges have reviewed Petitioners' motion for clarification and determined that it is not properly before the Judges. In their motion, Petitioners are not seeking a clarification of the final regulation; they are seeking a substantive change. The Judges thus determined that Petitioners' motion should be treated as a petition for rulemaking and made subject to notice and public comment.

The Judges received a second petition for rulemaking from SoundExchange, Inc. (SoundExchange), the sole Collective designated by the Judges to collect and distribute sound recording royalties under the section 112(e) and 114 licenses. *See Petition of SoundExchange, Inc. for a Rulemaking to Consider Modifications to Notice and Recordkeeping Requirements for Use of Sound Recordings Under Statutory License* (Oct. 21, 2013) (*SX Petition*). SoundExchange proposes major modifications to 37 CFR part 370.

III. Joint Petition

Petitioners' proposal concerns the applicability of requirements in the final regulation that parties availing themselves of the statutory licenses under 17 U.S.C. 112 and 114 report on all performances of sound recordings that are subject to the licenses. One of the stated goals of the final regulation was to move most users of sound recordings toward full census actual total performance (ATP) reporting and away from reporting of sampled data. *Notice and Recordkeeping for Use of Sound Recordings under Statutory License, Final rule, Docket No. RM 2008–7,* 74 FR 52418, 52420 (Oct. 13, 2009). The final regulation contained an exception, however, for ''the lowest intensity users of sound recordings in a

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004 (Reform Act), Public Law 108–409, 118 Stat. 2341, responsibility for establishing the notice and recordkeeping requirements under sections 112 and 114 of the Copyright Act resided with the Librarian of Congress and the Copyright Office. The Reform Act transferred this responsibility to the Judges. As of May 31, 2005, the effective date of the Reform Act, the Copyright Office had promulgated regulations governing the filing of notices of intention to use the section 112 and/or 114 statutory licenses,—as required by 17 U.S.C. 112(e)(7)(A) and 114(f)(4)(B), respectively—the required data elements to be provided in a report of use, and the frequency of reporting. *See* 69 FR 11515 (Mar. 11, 2004) and 69 FR 58261 (Sept. 30, 2004). The Judges carried forward those regulations. *See* 71 FR 59010–11 (Oct. 6, 2006) (full background of Copyright Office notice and recordkeeping rulemaking).

[2] In 2011, SoundExchange filed with the Judges a petition for rulemaking to consider adopting regulations to authorize SoundExchange '' 'to use proxy reporting data to distribute to copyright owners and performers certain sound recording royalties for periods before 2010 that are otherwise undistributable due to licensees' failure to provide reports of use' or their provision of 'reports of use that are so deficient as to be unusable.' '' *Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Final rule, Docket No. RM 2011–5,* 76 FR 45695 (Aug. 1, 2011). After soliciting comment on SoundExchange's proposal, the Judges adopted final regulations relating to distributions based on proxy data. *Id.*

[3] On November 12, 2009, before the Judges ruled on this motion, CBI filed a Petition for Review of the final regulation with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) (Appeal No. 09–1276). This appeal was held in abeyance pending the outcome of an appeal of the Judges' final determination in *Docket No. 2009–1 CRB Webcasting III.* The D.C. Circuit concluded that appeal on July 6, 2012, holding that the manner by which the Judges were appointed was unconstitutional, dictating a statutory remedy, and remanding to the Judges. *Intercollegiate Broad. Sys. v. Copyright Royalty Bd.,* 684 F.3d 1332, 1340–41 (D.C. Cir. 2012), *cert. denied,* 133 S. Ct. 2735 (2013). The Judges issued their initial determination on remand on January 9, 2014, and the D.C. Circuit transferred CBI's appeal of the final regulation to the United States District Court for the District of Columbia. *See Order,* in Appeal No. 09–1276 (D.C. Cir. Oct. 28, 2013). By a separate document today in the **Federal Register**, the Judges have affirmed adoption of the final regulation.

single category of users—broadcasters typically engaged in simulcasting their over-the-air broadcasts on the Web.'' *Id.* These broadcasters, who pay no more than the minimum fee for their use of sound recordings under the statutory license (*i.e.,* ''minimum fee broadcasters''), are permitted to continue reporting sampled Aggregate Tuning Hour (ATH) data on a quarterly basis. 37 CFR 370.4(d)(3)(i). All other services must report census ATP data on a monthly basis. 37 CFR 370.4(d)(3)(i).

Petitioners point out that, unlike minimum fee broadcasters, Educational Stations [4] that only pay the minimum fee are subject to monthly reporting of census data if they do not qualify as broadcasters—*i.e.,* ''a type of Commercial Webcaster or Noncommercial Webcaster that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission [''FCC'']. 37 CFR 380.2(b).

Petitioners assert that the full census ATP reporting requirement presents a serious problem for unlicensed minimum fee Educational Stations. They argue that, for the same reasons that the Judges found it was not reasonable for minimum fee FCC-licensed broadcasters to move toward full census ATP reporting, it is also not reasonable for minimum fee unlicensed Educational Stations to move toward full census ATP reporting.

Therefore, Petitioners propose that the definition of a ''minimum fee broadcaster'' in 37 CFR 370.4(b)(3) be amended to read: ''(3) A *minimum fee broadcaster* is a nonsubscription service whose payments for eligible transmissions do not exceed the annual minimum fee set forth in 17 U.S.C. 112 and 114; and either (i) meets the definition of a broadcaster pursuant to § 380.2(b) of this chapter; or (ii) is an Educational Station, that is, any webcaster that (A) is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and (B) the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and (C) is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and (D) is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.'' *Joint Petition* at 4.

Petitioners also provide for the Judges' consideration alternative language so that the amendment addresses entities other than Educational Stations: ''(3) A *minimum fee broadcaster* is a nonsubscription service whose payments for eligible transmissions do not exceed the annual minimum fee set forth in 17 U.S.C. 112 and 114; and either (i) meets the definition of a broadcaster pursuant to § 380.2(b) of this chapter; or (ii) is a 'noncommercial webcaster' as defined in 17 U.S.C. 114(f)(5)(E)(i).'' *Id.* at 4 n.5.

The new definition of ''minimum fee broadcaster'' would be incorporated by reference in 37 CFR 370.4(d)(3)(ii), which provides that such entities may proceed with quarterly sample ATH data reports.

Finally, Petitioners assert that failure to make the proposed change could cause hundreds of minimum fee paying FCC-unlicensed Educational Stations to cease operations or to become infringers simply because they lack an FCC license. Petitioners assert further that copyright owners and performers would see a decline in royalties paid and distributed.

The Judges seek comment on Petitioners' proposal. The Judges especially seek comment on how such unlicensed minimum fee Educational Stations, as defined by Petitioners, have been reporting under the current regulations. Have any ceased operations, as predicted by Petitioners? If so, how many? If not, does the need still exist for Petitioners' proposed amendment? Have Petitioners, in the first instance, persuasively made their case that such a change is warranted? If so, should the Judges adopt Petitioners' preferred definition, which applies only to Educational Stations, or the broader, alternate definition?

IV. SoundExchange Petition

SoundExchange proposes several amendments in eight areas of the current regulations, which, it asserts, will better reflect and accommodate the large and growing number of services paying royalties under the section 112 and 114 licenses.[5] The proposed amendments seek ''to address important operational problems affecting the accuracy of royalty distributions and to ensure that the regulations will remain workable as the digital music market continues to mature and the scale of reporting increases.'' *See SX Petition* at 2. In SoundExchange's view, the suggested amendments described herein reflect the elements frequently reported incorrectly by licensees and strike the requisite balance between not being too burdensome on services and meeting the statutory purpose of ensuring that the proper copyright owners and performers are compensated for the use of their work. *Id.*

A. Report of Use and Statement of Account Consolidation, Matching, and Identification

In its petition, SoundExchange describes the difficulties it currently faces in matching (1) the royalty payments made by licensees to (2) the statement of account (SOA) ''allocating the payment to a specific service and time period and reflecting the calculation of the payment'' and (3) the report of use (ROU) ''detailing the usage corresponding to the payment.'' *Id.* at 5. Such difficulty, according to SoundExchange, results, in part, from licensees that offer multiple services consolidating their reporting and identifying their services in ways that hinder SoundExchange's ability to credit payments to the appropriate licensee and to make accurate distributions based on actual usage. *Id.*

SoundExchange asserts the proposed amendments in this area will allow SoundExchange easily to discern the relationship between payment and usage from the documents provided by the licensee. To that end, SoundExchange proposes a number of amendments.

[4] Petitioners use the term ''Educational Stations'' to refer to any webcaster (not just FCC-licensed webcasters) that:

(A) Is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(B) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and

(C) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation of Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and

(D) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

Joint Petition at 2 n.1 (*emphasis and citations omitted*). While the Judges' proposed amendment to the definition of ''minimum fee broadcaster'' does not incorporate CBI's singular reference to ''Educational Stations,'' the proposed amendment retains the substance of CBI's proposal. *See* proposed § 370.4(b)(2).

[5] As of the date its petition for rulemaking was filed, SoundExchange stated it received reporting and payments from more than 2,200 different services. *SX Petition* at 2.

1. Consolidation and Matching

First, SoundExchange seeks a requirement that payments, SOAs, and ROUs for affiliated entities be provided at the enterprise level, if feasible. *Id.* at 7. If not, then SoundExchange seeks a requirement that ''any consolidation of ROUs and SOAs for affiliated licensees be the same; that is, that there be a one-to-one relationship between usage reported in an ROU and SOA unless SoundExchange and the licensee agree otherwise.'' *Id.* at 7 (footnote omitted). In support of its proposal, SoundExchange points out that the one-to-one correspondence between ROUs and SOAs already exists for broadcasters under 37 CFR 380.13(g)(1)(viii). *Id.* at 8. SoundExchange argues that requiring a service to identify itself by the same name on its SOAs and ROUs also would go a long way in establishing the desired one-to-one relationship. Currently, SoundExchange explains, ''a single service frequently may be identified by different names on its SOAs and ROUs.'' *Id.* at 8. To rectify this problem, SoundExchange proposes amendments to § 370.4(e)(7)(i)(A) and (e)(5), requiring identification of the service on both the SOA and ROU by the ''most specific service name appropriate to the level of consolidation . . . at the enterprise level, if feasible,'' and using that same name on the ROU file name, respectively. *Id.* at 9.

SoundExchange points out that it recognizes that services may need a certain amount of flexibility in the consolidation of their reporting, as well as the ability to periodically change that consolidation. Such flexibility, however, according to SoundExchange, hinders its ability to ''relate the name used on a particular associated SOA and ROU to the specific service offerings and relevant parent enterprise and payment history.'' *Id.* at 9. To accommodate such flexibility for the licensee and maintain its ability to properly match payments to the proper account, SoundExchange proposes amendments to §§ 370.3(d) and 370.4(e)(7)(i)(B), requiring services to provide on its SOA, ROU, and payment an account number/identification number assigned by SoundExchange.[6] *Id.* at 10.

Next, SoundExchange contends that provision of separate ROUs should be required for each different type of service, in light of the current requirement that separate SOAs must be provided for services subject to different rates since payment calculations differ. *Id.* To make this requirement clear, SoundExchange proposes language be added to § 370.4(d)(1).

2. ROU Headers and Category Codes

SoundExchange requests that the Judges require the use of ROU file headers because such headers ''identify the columns in the ROU to allow SoundExchange to (1) recognize readily when a licensee has submitted an ROU with the columns out of order . . . , and (2) be able to ingest such ROUs without manual intervention.'' *Id.* at 10. Mandatory use of ROU file headers would, in SoundExchange's opinion, ''significantly improve [its] ability to load ROUs without manual intervention and/or follow-up with the service.'' *Id.* SoundExchange specifically proposes to eliminate the report generation date and delimiters from the header format, as such requirements, in its opinion, are unimportant, and to add several new lines to the header (and the reasons therefor):

> Station call letters, if multiple broadcast stations are included in the log, in order to allow SoundExchange to identify the scope of usage covered by the ROU before ingesting it.
>
> Audience measurement type (ATH (aggregate tuning hours) or ATP (actual total performances)), so it will be clear which type of usage is reported in the ROU.
>
> Checksum (total audience measurement reported on the ROU) in order to allow SoundExchange to confirm whether it received and ingested all of the data the licensee intended to provide, and thereby minimize effort and reduce the risk of inaccurate distribution if an ROU is corrupted.
>
> Character encoding format used in the file, in order to allow SoundExchange to read contents of the file as the licensee intended them.
>
> Digital signature certifying the ROU, if the licensee chooses to include the signature in the ROU itself, in order to provide a permissible location for the signature currently required under 37 CFR 370.4(d)(4).

SX Petition at 11.

SoundExchange acknowledges that licensees initially opposed providing name and contact information in an ROU header as ''unnecessarily burdensome'' since that information appears elsewhere in the ROU as well as in the Notice of Use. *Id.* at 12, *citing* 71 FR 59010, 59012 (Oct. 6, 2006). SoundExchange attempts to refute this contention, arguing: (1) That information in the notices of use can be out of date, (2) licensees frequently fail to provide contact information in a cover letter or email, as currently required by 37 CFR 370.4(e)(3)(ii) and (iii), and (3) the possible separation of the ROU and such external documents. *Id.* at 12. Adoption of this proposal, SoundExchange points out, would render the current provisions in § 370.4(e)(3)(ii) and (iii) superfluous and suggests their deletion.

SoundExchange also asserts that adoption of its proposed amendments regarding consolidation, matching, and account numbers/identifiers, *see supra,* would enable the deletion of the current category codes required in 37 CFR 370.4(d)(2)(ii). SoundExchange explains category codes can be useful ''for distinguishing different types of transmissions with different royalty rates when they are combined in a single ROU, and for matching ROUs to SOAs when the matching is not otherwise apparent.'' *Id.* at 14. This purpose, according to SoundExchange, would be fulfilled by the above proposed amendments. Should the Judges decide not to adopt the proposed amendments concerning consolidation and matching, SoundExchange requests retention of the category codes requirement, provided that such codes are updated to reflect current rate structures. SoundExchange asserts that such updates can be done either by the Judges through their notice and recordkeeping authority under 17 U.S.C. 803(c)(3), or their authorization of SoundExchange to publish an updated list of codes. *Id.*

3. Direct Delivery of Notices of Use

Services intending to operate under the section 112 and 114 licenses of the Copyright Act must file a Notice of Use (NOU) with the Licensing Division of the Copyright Office. 37 CFR 370.2. SoundExchange describes the NOU's importance to its distribution process, namely, information in the NOU is used to set up the database records of licensees and services from whom payment is expected. *Id.* at 13. The current regulations, SoundExchange laments, do not contain a mechanism to provide it with timely receipt of the NOU. To satisfy its operational need for access to NOUs, SoundExchange proposes changes to § 370.2(d) to require licensees to send copies of their NOUs to SoundExchange, either by mail or email, at the same time they file them with the Copyright Office. *Id.* at 14.

B. Flexibility in Reporting Format

SoundExchange seeks to have codified in the recordkeeping regulations the already-recognized ability of it and licensees to vary reporting requirements by agreement. *Id.* at 15, *citing* 71 FR at 59012 (Oct. 6,

[6] SoundExchange notes that it currently uses numerical identifiers on an internal basis to better identify accounts ''easily and unambiguously.'' *Id.* at 10. The proposed language would apply only to those services for which SoundExchange has assigned such identifier. *Id.*

2006)(''[C]opyright owners and services are always free to negotiate different format and delivery requirements that suit their particular needs and situations . . .''). Moreover, the proposed amendments, argues SoundExchange, will entice licensees to ''do business with SoundExchange electronically,'' which in turn will result in more efficiency for both SoundExchange and licensees.

1. Certification/Signature Requirements

The current regulations require that ROUs ''include a signed statement'' by the appropriate officer or representative attesting to the accuracy of the information provided in the ROU. 37 CFR 370.4(d)(4). SoundExchange points out that the regulation does not require a handwritten signature and notes that in practice an electronic signature has been embedded in the ROU or provided in a cover email or ''other ancillary document.'' *SX Petition* at 16. To better reflect current practices and allow for future possibilities, SoundExchange proposes adding language to § 370.4(d)(4) to read ''Reports of Use shall include or be accompanied by a signed statement . . .''.[7]

2. Character Encoding

SoundExchange asserts that the current requirement that ROUs be provided in the form of ASCII text files hampers its ability to make accurate distributions of royalties. *SX Petition* at 17. In SoundExchange's opinion, the ASCII character encoding format is outdated and suffers from myriad limitations, *e.g.,* allowance of encoding for only 128 characters and the inability to support non-Latin alphabets, including certain marks used in such alphabets, used in several other languages. Consequently, SoundExchange concludes, ''many or most computer systems have migrated to more modern character encoding formats,'' of which there are ''many alternatives.'' *Id.* SoundExchange reports that ROUs apparently are provided in 5 to 10 different non-ASCII character encoding formats, although licensees do not identify what formats they use. This lack of information, SoundExchange states, leaves it ''trying to guess what character encoding was used, and risks loss of data if the wrong format is used to read the ROU when it is loaded.'' *Id.* at 18.

SoundExchange's proposed solution to this problem is to ''modernize'' the regulations by:

> Recognizing the reality that services use encoding formats other than ASCII by providing flexibility for them to choose an appropriate encoding format.
>
> Requiring licensees to identify the character encoding format they use and include it in the ROU header, so that SoundExchange can read ROUs as they were intended, convert them properly, and not lose data.
>
> Requiring use of the UTF–8 encoding format if feasible. . . .

Id. SoundExchange recommends use of the UTF–8 format because, in its opinion, ''it can support every system of writing . . . [so its] use should generally be feasible''; ''it is probably the dominant character encoding format today, and its use has become a best practice''; and ''[i]t is the default character encoding format in major Linux/Unix operating system implementations, which tend to be used by larger licensees.'' *Id.* Regardless of the preference for the UTF–8 format, SoundExchange makes assurances that it can accept other encoding formats as long as licensees identify the format used. *Id.*

3. XML File Format

Another proposal made by SoundExchange with regard to the requirement that ROUs be provided in text file format is to allow XML (Extensible Markup Language) as an alternative, but not mandatory, format for delivery of ROUs. *Id.* at 19. SoundExchange describes XML as ''a common and flexible means of encoding documents'' offering ''many advantages over text files,'' such as allowing ''more flexible inclusion in ROU data files of information that now must be included in the file name or header, enabl[ing] variable fields . . . , facilitat[ing] automatic validation of ROUs, allow[ing] real-time streaming of ROU data, and otherwise simplify[ing] SoundExchange's processing of ROUs.'' *Id.*

C. Facilitating Unambiguous Identification of Recordings

SoundExchange recounts that throughout the history of these notice and recordkeeping regulations, ''the most contentious issues have generally concerned the data items required to be reported on the individual lines of an ROU to identify the specific recordings used by a service.'' *SX Petition* at 19. SoundExchange alleges that the current set of data elements do not allow for the unambiguous identification of recordings; as a result, SoundExchange states that a ''significant number'' of such recordings cannot be identified. *Id.* at 20. SoundExchange identifies three areas of reporting as illustrative of this problem: Compilations, re-records,[8] and classical music.

In relation to compilations and re-records, SoundExchange characterizes the failure of licensees to provide the International Standard Recording Code (ISRC)[9] as the primary impediment to its ability to identify the sound recording. *Id.* Although licensees currently can report the album and label name as an alternative to the ISRC, *see* § 370.4(d)(2)(v), SoundExchange contends that this alternative can be problematic with respect to compilations because (1) the album title differs from the original album on which the recording appeared, (2) the album title is ambiguous, *e.g.,* ''Greatest Hits,'' and (3) the label distributing the compilation differs from the label distributing the original album. *Id.*[10] Similar problems exist with respect to re-records, according to SoundExchange, because oftentimes ''the payees are different for each of the recordings due to different copyright owners, different 'featured artists' . . . changing membership of a featured band over time, different producers, and different nonfeatured artists.'' *Id.* at 20–21.

To rectify these issues, SoundExchange proposes requiring licensees to provide the ISRC (where available), as well as the album title and marketing label, as preexisting subscription services (PSS) currently are

[7] SoundExchange uses its proposal regarding ROU signatures to urge the Judges to exercise their authority under 17 U.S.C. 803(c)(4) to eliminate the requirement of a handwritten signature on statements of account provided pursuant to 37 CFR 380.4(f)(3), 380.13(f)(3), 380.23(f)(4), and 384.4(f)(3). The Judges decline SoundExchange's invitation as moot. The Judges addressed §§ 380.4, 380.13 and 380.23 in their Initial Determination on Remand in the *Webcasting III* proceeding, *see Determination After Remand of Rates and Terms for Royalty Years 2011–2015, Docket No. 2009–1 CRB Webcasting III* (Jan. 9, 2014), and the Judges' adoption of the parties' settlement agreement in the *Business Establishments II* proceeding removed the handwritten signature requirement in § 384.4(f)(3). *See,* 78 FR 66276 (Nov. 5, 2013).

[8] SoundExchange defines ''re-records'' as those instances where an artist has recorded his/her most popular songs multiple times, *e.g.,* with a different band, a different label, ''live'' versus original album. *Id.* at 20.

[9] SoundExchange notes that ISRCs ''are widely used by record companies and most digital distribution companies for purposes of rights administration, and are used for reporting purposes in direct license arrangements between record companies and webcasting and on-demand services.'' *Id.* at 22.

[10] SoundExchange states that licensees frequently report as ''various'' the artists on a compilation with multiple artists. *Id.* at 20. The Judges note that the Copyright Office specifically deemed such identification as unacceptable. *See* 69 FR 11524 (Mar. 11, 2004) (''[W]here the sound recording performed is taken from an album that contains various featured artists, *i.e.,* a compilation, it is not acceptable to report the featured artist as 'Various.' The featured artist of the particular sound recording track performed must be reported.'').

required to do under 37 CFR 370.3(d)(5), (6), (8). The benefits for this change, in SoundExchange's opinion, are twofold: (1) It represents the ''easiest'' solution for services to implement because ISRCs are typically available to the services, and (2) it provides the ''greatest positive effect'' to SoundExchange's match rate. *Id.* at 22.

With respect to classical music, SoundExchange charges that services' incorrect identification of classical tracks—namely, reporting the composers as artists, in direct contravention of the Copyright Office's ''clear instructions'' to the contrary—severely hamper its ability to unambiguously identify the sound recording. *Id.* at 21 *citing* 69 FR 11523–24 (Mar. 11, 2004). SoundExchange recommends the following amendments to § 370.4(d)(2):

> Rather than completing the current featured artist field, a service would identify the featured artist by reporting (1) ensemble (*i.e.,* name of orchestra or other group), (2) conductor, and (3) soloist(s), where applicable, to the extent that any of the foregoing is identified on the commercial product packaging.
>
> Rather than completing the current sound recording title field, a service would identify the sound recording title by reporting (1) composer, (2) title of overall work, and (3) title of movement or other constituent part of the work, if applicable.

Id. at 24. These proposed amendments, in SoundExchange's estimation, ''specify clearly the level of precision necessary to identify the featured artist and sound recording title of classical tracks'' with minimal impact on text and XML format reports. *Id.*

D. Reporting Non-Payable Tracks

The rate structure adopted by the Judges in their recent decision setting the rates and terms under sections 112 and 114 for satellite digital audio radio services (SDARs) allows services to exclude use of certain categories of sound recordings from royalty payments.[11] *See Determination of Rates and Terms for Preexisting Subscription Services and Preexisting Satellite Digital Audio Radio Services, Final rule and order, Docket No. 2011–1 CRB PSS/Satellite II,* 78 FR 23054, 23072–73 (Apr. 17, 2013) (deductions allowed for directly licensed recordings and pre-1972 recordings). The regulations governing SDARs require the service to identify the tracks for which it claims an exclusion from royalties. *See* 37 CFR 382.13(h). SoundExchange requests the Judges to include in these notices and recordkeeping regulations a similar provision ''requiring that ROUs for [any] service relying on the statutory licenses include reporting of all recordings used by the service, with a new field flagging any usage excluded from the service's royalty payment.'' *Id.* at 26 (footnote omitted). SoundExchange argues that requiring all services to identify any excluded sound recordings better enables SoundExchange to ensure the accuracy of a service's royalty payments. *Id.* The proposed provision, SoundExchange points out, only affects those services that exclude sound recordings from their royalty payments.

E. Late or Never-Delivered ROUs

SoundExchange proposes amendments to address those instances where a licensee submits its ROU late, never submits an ROU, or submits an unusable ROU.[12]

1. Proxy Distribution

First, SoundExchange seeks from the Judges standing authorization to use proxy data [13] for distribution of royalties in those instances where a licensee either fails to submit an ROU or submits an ROU that is unusable and the likelihood of SoundExchange obtaining meaningful information in order to effectuate a distribution is small. *Id.* at 28. SoundExchange notes that proxy distributions have been authorized in two prior instances: (1) In 2004, the ROUs submitted by PSS constituted the proxy data for distributions to all other types of services for the period 1998–2004, *see* 69 FR 58261 (Sept. 30, 2004); and (2) in 2011, for the period 2004–2009, ROUs of other services of the same type for a particular calendar year served as proxy data for those services not submitting an ROU during that calendar year. *See* 37 CFR 370.3(i), 370.4(f).

Unlike in the prior instances of proxy distributions, where the distribution methodology was specified in the regulations, the language proposed by SoundExchange here is more general in that it does not specify a particular methodology. SoundExchange charges that ''a standing regulation (as opposed to one targeted at a one-time distribution and based on an analysis of the situation at that time) should provide flexibility for SoundExchange to reassess the details of the distribution methodology from time to time to achieve fair results based on circumstances at that time and its most recent data and experience.'' *Id.* at 29. Given the composition of its board of directors—representatives of the recording industry (both major and independent labels), recording artists, artist representatives and music organizations—SoundExchange argues that it is ''well-situated to make a determination of when a proxy distribution is justified and of what precise methodology should be employed.'' *Id.*

The Judges recognize that the distribution methodology may not necessarily have to be specified in a regulation; however, the Judges believe that SoundExchange should have to disclose the methodology serving as the basis for a proxy distribution and afford copyright owners and performers an opportunity to object to the proffered methodology. Thus, the Judges seek comment on how to accomplish these goals without codification in a regulation. Should the amended regulation include language requiring SoundExchange to post the proffered methodology for a particular proxy distribution on its Web site and provide a timeframe in which affected copyright owners and performers may object? What is an adequate and reasonable timeframe for objections to be lodged? If there is an objection, what process should be adopted in order to resolve the objection? Is there some other process?

2. Late Fees

Next, SoundExchange urges the Judges to impose a late fee for ROUs that are untimely and/or noncompliant. *Id.* at 29. The proposed language offered by SoundExchange states, in pertinent part, that the late fee ''shall accrue from the due date of the [ROU] until a fully compliant [ROU] is received by the Collective or the relevant royalties are distributed pursuant to [a proxy distribution], provided that, in the case of a timely provided but noncompliant [ROU], the Collective'' notifies the Service within 90 days of ''any noncompliance that is reasonably

[11] The regulations governing webcasting, where royalties are paid on a per-performance basis, exclude from the definition of ''performance'' those sound recordings not requiring a license and those that are licensed separately. *See* 37 CFR 380.2, 380.11, and 380.21.

[12] For 2012, SoundExchange states that 41% of the ROUs received were submitted more than five days late, 31% of licensees never submitted any ROU, and 585 licensees submitted ROUs with an average match rate under 50%. Moreover, according to SoundExchange, in 2012, 69% of licensees have failed at least once to submit a required ROU. *Id.* at 26.

[13] ''Proxy data,'' as defined by SoundExchange, is ''data about usage, other than the actual usage for which the relevant royalties were paid, which is used in place of (*i.e.,* as a 'proxy' for) data concerning the actual relevant usage in making a royalty distribution.'' *Id.* at 27 n13.

evident to the Collective.'' [14] *See SX Petition* at Exhibit B at proposed § 370.6(a).

In support of its proposal, SoundExchange stresses that the ROU's importance to the distribution process equals that of the royalty payment and the SOA, namely, without it, no distribution can be made. *Id.* at 30. SoundExchange notes that the Judges have imposed late fees for late payments and late SOAs, *see, e.g.,* 37 CFR 382.13(d), and argues that the same reasoning supports adoption of a late fee for ROUs, especially in light of the frequency with which ROUs are submitted in an untimely and/or noncompliant manner. *Id.* Finally, SoundExchange claims that in its experience the late fees imposed for SOAs promote compliance. *Id.*

The Judges specifically seek comment on SoundExchange's proposal to have the late fee accrue from the original due date until receipt by SoundExchange of a fully compliant ROU, in light of the Judges' previously stated concern that a late fee provide ''an effective incentive'' to comply in a timely manner without being ''punitive.'' *See* 73 FR 4080, 4099 (Jan. 24, 2008). Does the proposed language assuage that concern? If not, should the Judges impose a cap on the amount of late fees SoundExchange can collect? If so, what should the cap be?

3. Accelerated Delivery of ROUs

Finally, SoundExchange asks the Judges to change the due date for ROUs submitted by all non-PSS services from the current 45 days after the close of the relevant reporting period to 30 days.[15] *SX Petition* at 30. The proposed change, in SoundExchange's view, better reflects the ''30-day [reporting] cycle for digital music services common under commercial music license agreements.'' *Id.* SoundExchange contends the requirement of services to report on a monthly, rather than the previous quarterly, basis obviates the need for the 45-day due date.[16] *Id.* Adoption of this proposed amendment, according to SoundExchange, will allow ''more time for data quality assurance without affecting the timing of distributions,'' thereby expediting the distribution of royalties. *Id.* at 31.

F. Correction of ROUs and SOAs

Another impediment to its ability to smoothly execute the royalty distribution process alleged by SoundExchange is the ''occasional'' receipt of corrected ROUs and SOAs submitted by Services upon their own initiative. *Id.* at 31. By way of example, SoundExchange notes that Services paying on a percentage-of-revenue basis submit corrected SOAs to reflect an adjustment of their revenue for a certain period. *Id.* Submissions of corrected ROUs and SOAs, according to SoundExchange, cause major disruptions to the ''flow of royalties through SoundExchange,'' especially when such corrections are submitted after completion of the initial processing of a ROU/SOA. *Id.* To combat such disruptions, SoundExchange proposes the addition of a new § 370.6 which would bar licensees ''from claiming credit for a downward adjustment in royalty allocations'' when the corrected ROU/SOA is submitted 90 days after the submission of the initial ROU/SOA and would allow SoundExchange to ''allocate any adjustment to the usage reported on the service's next ROU, rather than the ROU for the period being adjusted.'' *Id.* The proposed amendment, in SoundExchange's view, affords licensees ''a fair opportunity to correct their own errors without unreasonably burdening the royalty distribution process.'' *Id.* at 32.

G. Recordkeeping

SoundExchange also proposes amendments to the recordkeeping requirements. It contends that the current provisions in 37 CFR 370.3(h) and 370.4(d)(6) are useful but incomplete. SoundExchange contends that currently no clear mechanism exists to allow it to substantiate royalty payments that depend on the usage asserted on a service's ROUs and SOAs. SoundExchange asserts that some services have adopted business rules systematically to exclude from their reported usage performances of less than a certain length, an exemption that SoundExchange represents is inconsistent with the CRB's regulations. *SX Petition* at 33. SoundExchange contends that such instances of underreporting can be determined by comparing the usage reported on the ROUs to the original records from which the ROUs were generated. *Id.* To permit such comparison, SoundExchange proposes a change to § 370.4(d)(5) to require services to retain and provide access to unsummarized source records of usage in electronic form, such as server logs or other native data. *Id.* Where a licensee relies upon a third-party contractor for its transmissions, SoundExchange proposes that the licensee be required to retain either server logs or native records of usage, if practicable, or, otherwise, retain the native data that the contractor provided to the licensee. *Id.*

H. Proposals SoundExchange Characterizes as Housekeeping

SoundExchange also proposes a number of changes that it characterizes as ''housekeeping'' changes. Although the Judges take no position at this time on whether any of the proposed changes in this section should be adopted, as a preliminary matter the Judges question whether certain of these proposals are properly characterized as ''housekeeping.''

1. Quattro Pro Template

SoundExchange proposes that the Judges delete the requirement in 37 CFR 370.4(e)(2) that SoundExchange provide template ROUs in Quattro Pro format, which SoundExchange contends is no longer necessary. *SX Petition* at 34.

2. Inspection of ROUs

SoundExchange also proposes that the Judges amend the requirement in 37 CFR 370.5(d) regarding the right to inspect ROUs. *Id.* SoundExchange proposes two changes to § 370.5(d). First, SoundExchange proposes to amend the rule to give featured artists the same right to inspect ROUs as copyright owners currently have. *Id.* at 36. Second, SoundExchange proposes to remove the last sentence of § 370.5(d), which requires the Collective to use its best efforts, including searching Copyright Office public records and published directories of sound recording copyright owners, to locate copyright owners to make available reports of use. *Id.* SoundExchange contends that this provision reflects an outdated view of the way in which the section 114 license is administered and is no longer practicable. *Id.*

3. Redundant Confidentiality Provisions

SoundExchange proposes eliminating confidentiality provisions in §§ 370.3(g) and 370.4(d)(5), which, SoundExchange contends, are redundant, given the presence of a confidentiality provision in § 370.5(e) that applies to ROUs generally. *Id.*

4. Clarification of New Subscription Services and Definition of Aggregate Tuning Hours

SoundExchange also proposes amendments to clarify which new subscription services are subject to

[14] The proposed language mirrors that adopted by the Judges in §§ 380.13(e) and 380.23(e), which, SoundExchange acknowledges, resulted from settlement agreements between SoundExchange and certain webcasters. *Id.* at 30.

[15] ROUs for PSS would remain 45 days after the close of the relevant reporting period. *See* 37 CFR 370.3(b).

[16] ''Minimum fee broadcasters'' still report on a quarterly basis. *See* 37 CFR 370.4(d)(3).

reporting on an aggregate tuning hour basis and which are required to report performances. *Id.* at 37. SoundExchange contends that there are two principal types of new subscription services, one of which provides a ''PSS-like service through cable and satellite television distributors and pays royalties pursuant to 37 CFR Part 383 on a percentage of revenue basis'' and one of which provides subscription webcasting and pays royalties pursuant to 37 CFR Part 380 Subpart A on a per-performance basis. *Id.* SoundExchange contends that the former type of service was intended to be permitted to use the aggregate tuning hour reporting method but the latter was not. As a result, SoundExchange proposes that the Judges amend 37 CFR 370.4(d)(2)(vii) and the definition of aggregate tuning hours in 37 CFR 370.4(b)(1) to narrow the types of new subscription services that may use the aggregate tuning hour reporting method. *Id.* at 37–38. SoundExchange also proposes updating the list of services in the aggregate tuning hours definition in 37 CFR 370.4(b)(1) entitled to report on an aggregate tuning hour basis purportedly to conform to changes to that list that the Judges adopted in 2009. *Id.* at 38.

5. Miscellaneous

SoundExchange proposes to change references to SoundExchange's office location in 37 CFR 370.4(e)(4). A generic reference would replace the address listed in the current rule, which, SoundExchange states, is no longer accurate. *Id.*

Next, SoundExchange proposes changes to 37 CFR 370.5(c) to state that SoundExchange must file an annual report by September 30 of the year following the reporting year. SoundExchange contends that the September 30 deadline would allow SoundExchange to have sufficient time after the end of the reporting year, to prepare a ''typical corporate annual report incorporating the audited numbers.'' *Id.* at 39. According to SoundExchange, the proposed September 30 deadline would supersede an earlier deadline set forth in a 2007 order from the Judges in which they expressed a preference for SoundExchange to post its annual report no later than the end of the first quarter of the year following the year that is the subject of the report. *See Order Granting in Part and Denying in Part Services' Motion to Compel SoundExchange to Provide Discovery Relating to the Testimony of Barrie Kessler, Docket No. 2005–5 CRB DTNSRA,* at 3 (June 6, 2007).

Finally, SoundExchange's remaining proposed amendments seek to: (1) Institute a consistent convention for capitalization of defined terms, which, SoundExchange states, the current rules lack, *id.;* (2) eliminate the term ''AM/FM Webcast'' in 37 CFR 370.4(b)(2) because, according to SoundExchange, the term does not appear in the current regulations, *id.* at 40; and (3) refer to the statutory licenses consistently as section 114 and section 112(e), unless the circumstance indicates a more specific reference, *id.*

V. Conclusion

The Judges seek comment on each of the proposed amendments herein and request that commenters give special attention to those issues specifically identified by the Judges in relation to a particular proposed amendment.

The Judges stress that, by setting forth the proposed amendments in this NPRM, the Judges are neither adopting them nor endorsing their adoption. The Judges will decide whether to adopt, modify, or reject any of the proposed amendments after reviewing any comments they receive in response to this NPRM.

List of Subjects in 37 CFR Part 370

Copyright, Sound recordings.

Proposed Regulations

In consideration of the foregoing, the Copyright Royalty Judges propose to amend 37 CFR part 370 as follows.

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

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

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

■ 2. Amend § 370.1 as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b), by removing ''114(d)(2)'' and adding ''114'' in its place each place it appears and by removing ''preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service'' and adding ''Preexisting Subscription Service, Preexisting Satellite Digital Audio Radio Service, Nonsubscription Transmission Service, New Subscription Service, Business Establishment Service'' in its place;

■ c. In paragraphs (e) through (g), by removing ''service'' and adding ''Service'' in its place each place it appears; and

■ d. In paragraph (i), by removing ''114(d)(2)'' and adding ''114'' in its place.

The revision reads as follows:

§ 370.1 General definitions.

* * * * *

(a) A *Notice of Use of Sound Recordings Under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114 of title 17, United States Code, or both, and is required under this part to be filed by a Service in the Copyright Office.

* * * * *

■ 3. Amend § 370.2 as follows:

■ a. In paragraph (a), by removing ''114(d)(2)'' and adding ''114'' in its place;

■ b. In paragraph (b)(5), by removing ''subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service'' and adding ''Subscription Service, Preexisting Satellite Digital Audio Radio Service, Nonsubscription Transmission Service, New Subscription Service or Business Establishment Service'' in its place;

■ c. By revising paragraph (d); and

■ d. In paragraph (e), by removing ''Recordings under'' and adding ''Recordings Under'' in its place.

The revision reads as follows:

§ 370.2 Notice of use of sound recordings under statutory license.

* * * * *

■ (d) *Filing notices; fees.* The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(e) of this title. Notices shall be placed in the public records of the Licensing Division. The Notice and filing fee shall be sent to the Licensing Division at either the address listed on the form obtained from the Copyright Office or to: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue SE., Washington, DC 20557–6400. A copy of each Notice also shall be sent to each Collective designated by determination of the Copyright Royalty Judges, at the physical address or electronic mail address posted on the Collective's Web site or identified in its Notice of Designation as Collective under statutory license pursuant to § 370.5(b). A Service that, on or after July 1, 2004, shall make digital transmissions and/or ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings Under Statutory License with the

Licensing Division of the Copyright Office and send a copy of the Notice to each Collective prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

* * * * *

■ 4. Amend § 370.3 as follows:

■ a. In paragraph (a), by removing ''reports of use'' and adding ''Reports of Use'' in its place, by removing ''114(d)(2)'' and adding ''114'' in its place, and by removing ''preexisting subscription services'' and adding ''Preexisting Subscription Services'' in its place.

■ b. In paragraph (c) introductory text, by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place in the first sentence and by removing ''subscription services'' and adding ''Subscription Services'' in its place each place it appears;

■ c. In paragraph (c)(2), by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place;

■ d. Amend paragraph (d):

■ i. By revising the introductory text;

■ ii. In paragraph (1), by removing ''preexisting subscription service or entity'' and adding ''Preexisting Subscription Service'' in its place; and

■ iii. In paragraph (5), by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place.

■ e. By revising paragraph (e);

■ f. In paragraph (f), by revising the introductory text;

■ g. By revising paragraph (f)(1);

■ h. By removing paragraph (g);

■ i. By redesignating paragraph (h) as paragraph (g); and

■ j. By removing paragraph (i).

The revisions read as follows:

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

* * * * *

(d) *Content.* A ''Report of Use of Sound Recordings Under Statutory License'' shall be identified as such by prominent caption or heading, and shall include the account number assigned to the Preexisting Subscription Service by the Collective (if the Preexisting Subscription Service has been notified of such account number by the Collective), the character encoding format used to generate the Report of Use (e.g., UTF–8), and the Preexisting Subscription Service's ''Intended Playlists'' for each channel and each day of the reported month. The ''Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

* * * * *

(e) *Signature.* Reports of Use shall include or be accompanied by a signed statement by the appropriate officer or representative of the Preexisting Subscription Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Preexisting Subscription Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(f) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications, unless the Preexisting Subscription Service and the Collective have agreed otherwise:

(1) Delimited text format, using pipe characters as delimiter, with no headers or footers, or XML (Extensible Markup Language) format, in either case with character encoding in the UTF–8 format if feasible;

* * * * *

■ 5. Revise § 370.4 to read as follows:

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

(a) *General.* This section prescribes rules for the maintenance and delivery of Reports of Use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, by Nonsubscription Transmission Services, Preexisting Satellite Digital Audio Radio Services, New Subscription Services, and Business Establishment Services.

(b) *Definitions.* (1) *Aggregate Tuning Hours* are the total hours of programming that a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster has transmitted during the reporting period identified in paragraph (d)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of transmissions by means of a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster, less the actual running time of any sound recordings for which the Service has obtained direct licenses apart from 17 U.S.C. 114 or which do not require a license under United States copyright law. For example, if a Minimum Fee Broadcaster transmitted one hour of programming to 10 simultaneous listeners, the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a Minimum Fee Broadcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 10.

(2) A *Minimum Fee Broadcaster* is a Nonsubscription Transmission Service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and either:

(i) Meets the definition of a broadcaster pursuant to § 380.2 of this chapter; or

(ii) Is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(iii) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and

(iv) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and

(v) Is exempt from taxation under section 501 of the Internal Revenue code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

(3) A *Performance* is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission or retransmission (e.g., the delivery of any

portion of a single track from a compact disc to one listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the Service has previously obtained a license from the copyright owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(4) *Play Frequency* is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the reporting period, then the Play Frequency is one. If the sound recording is transmitted 10 times during the reporting period, then the Play Frequency is 10.

(c) *Delivery.* Reports of Use shall be delivered to Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated by determination of the Copyright Royalty Judges. Reports of Use shall be delivered on or before the thirtieth day after the close of each reporting period identified in paragraph (d)(3) of this section.

(d) *Report of Use.* (1) *Separate reports.* A Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service or a New Subscription Service that transmits sound recordings pursuant to the statutory license set forth in section 114 of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods. However, a provider of Services subject to different statutory rates shall provide a separate Report of Use for each such type of Service. When corporate affiliates provide multiple Services of the same type, they shall if feasible consolidate their reporting onto a single Report of Use for that type of Service. Each Report of Use must cover the same scope of activity (e.g., the same Service offering and the same channels or stations) as any related statement of account, unless the Service and the Collective have agreed otherwise.

(2) *Content.* For a Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service or Business Establishment Service that transmits sound recordings pursuant to the statutory license set forth in section 114 of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (d)(3) of this section, whether or not the Service is paying statutory royalties for the particular sound recording;

(i) The name of the Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service or Business Establishment Service making the transmissions;

(ii) The featured artist, except in the case of a classical recording;

(iii) The sound recording title, except in the case of a classical recording;

(iv) The International Standard Recording Code (ISRC), where available and feasible;

(v) The album title;

(vi) The marketing label;

(vii) For a Nonsubscription Transmission Service except those qualifying as Minimum Fee Broadcasters and for a New Subscription Service other than a service as defined in § 383.2(h) of this chapter: The actual total Performances of the sound recording during the reporting period;

(viii) For a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster: The actual total Performances of the sound recording during the reporting period or, alternatively, the:

(A) Aggregate Tuning Hours;

(B) Channel or program name; and

(C) Play Frequency;

(ix) In the case of a classical recording:

(A) The ensemble (e.g., orchestra or other group) identified on the commercial product packaging, if any;

(B) The conductor identified on the commercial product packaging, if any;

(C) The soloist(s) identified on the commercial product packaging, if any;

(D) The composer of the relevant musical work;

(E) The overall title of the relevant musical work (e.g., the name of a symphony); and

(F) The title of the relevant movement or other constituent part of the musical work, if applicable; and

(x) The letters ''NLR'' (for ''no license required'') if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because transmission of the sound recording does not require a license, or the letters ''DL'' (for ''direct license'') if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because the Service has a license directly from the copyright owner of such sound recording.

(3) *Reporting period.* A Report of Use shall be prepared:

(i) For each calendar month of the year by all Services other than a Nonsubscription Service qualifying as a Minimum Fee Broadcaster; or

(ii) For a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year by a Nonsubscription Service qualifying as a Minimum Fee Broadcaster and the two-week period need not consist of consecutive weeks, but both weeks must be completely within the calendar quarter.

(4) *Signature.* Reports of Use shall include or be accompanied by a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.

(5) *Documentation.* A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use. During that period, a Service shall also keep and retain in

machine-readable form unsummarized source records of usage underlying the Report of Use, such as server logs. If the Service uses a third-party contractor to make transmissions and it is not practicable for the Service to obtain and retain unsummarized source records of usage underlying the Report of Use, the Service shall keep and retain the original data concerning usage that is provided by the contractor to the Service.

(e) *Format and delivery.* (1) *Electronic format only.* Reports of Use must be maintained and delivered in electronic format only, as prescribed in paragraphs (e)(2) through (7) of this section. A hard copy Report of Use is not permissible.

(2) *File format: facilitation by provision of spreadsheet templates.* All Report of Use data files must be delivered in text or XML (Extensible Markup Language) format, with character encoding in the UTF–8 format if feasible. To facilitate such delivery, SoundExchange shall post and maintain on its Internet Web site a template for creating a Report of Use using Microsoft's Excel spreadsheet and instruction on how to convert such spreadsheets to UTF–8 text files that conform to the format specifications set forth below. Further, technical support and cost associated with the use of the spreadsheets is the responsibility of the Service submitting the Report of Use.

(3) *Delivery mechanism.* The data contained in a Report of Use may be delivered by any mechanism agreed upon between the Service and SoundExchange, or by File Transfer Protocol (FTP), email, or CD–ROM according to the following specifications:

(i) A Service delivering a Report of Use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall maintain on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A Service delivering a Report of Use via email shall append the Report as an attachment to the email.

(iii) A Service delivering a Report of Use via CD–ROM must compress the reporting data to fit onto a single CD–ROM per reporting period.

(4) *Delivery address.* Reports of Use shall be delivered to SoundExchange at the physical or electronic mail address posted on its Web site or identified in its Notice of Designation as Collective under statutory license pursuant to § 370.5(b). SoundExchange shall forward electronic copies of these Reports of Use to any other Collectives defined in this section.

(5) *File naming.* Each data file contained in a Report of Use must be given a name by the Service, consisting of the most specific service name appropriate to the scope of usage reflected in the Report of Use and statement of account, followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of year, month, and day (YYYYMMDD). Each file name must end with the file type extension of ''.txt''. (*Example:* AcmeMusicCo20050101–20050331.txt).

(6) *File type and compression.* (i) All data files must be in text or XML (Extensible Markup Language) format, with character encoding in the UTF–8 format if feasible.

(ii) A Report of Use must be compressed in one of the following zipped formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

(iii) Zipped files shall be named in the same fashion as described in paragraph (e)(5) of this section, except that such zipped files shall use the applicable file extension compression name described in this paragraph (e)(6).

(7) *Files with headers.* (i) Services shall submit files with headers, in which the following elements, in order, must occupy the first 17 rows of a Report of Use:

(A) Name of Service as it appears on the relevant statement of account, which shall be the most specific service name appropriate to the scope of usage reflected in the Report of Use and statement of account;

(B) The account number assigned to the Service by the Collective for the relevant Service offering (if the Service has been notified of such account number by the Collective);

(C) Name of contact person;

(D) Street address of the Service;

(E) City, state and zip code of the Service;

(F) Telephone number of the contact person;

(G) Email address of the contact person;

(H) Start of the reporting period (YYYYMMDD);

(I) End of the reporting period (YYYYMMDD);

(J) Station call letters, if multiple broadcast stations are included in the Report of Use, or otherwise a blank line;

(K) Number of rows in data file, beginning with 18th row;

(L) Checksum (the total of the audience measurements reported on the Report of Use);

(M) Audience measurement type (ATP if the Service reports actual total Performances, ATH if the Service reports Aggregate Tuning Hours);

(N) Character encoding format used to generate the Report of Use (e.g., UTF–8);

(O) Digital signature pursuant to paragraph (d)(4) of this section, if included in the Report of Use;

(P) Blank line; and

(Q) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (e)(7)(i)(A) through (G) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (e)(7)(i)(H) and (I) of this section should not exceed eight alphanumeric characters.

(iii) Data text fields, as required by paragraph (d)(2) of this section, begin on row 18 of a Report of Use. A carriage return must be at the end of each row thereafter. Abbreviations within data fields are not permitted.

(iv) The text indicator character must be unique and must never be found in the Report's data content.

(v) The field delimiter character must be unique and must never be found in the Report's data content. Delimiters must be used even when certain elements are not being reported; in such case, the Service must denote the blank data field with a delimiter in the order in which it would have appeared.

■ 6. Amend § 370.5 as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (c), by adding ''The Collective should post its Annual Report by no later than September 30 of the year following the year that is the subject of the report.'' after ''administrative expenses.'';

■ c. By revising paragraph (d); and

■ d. By adding new paragraph (g).

The revisions and addition read as follows:

§ 370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which Reports of Use shall be collected and made available under section 112(e) and 114 of title 17 of the United States Code.

* * * * *

(d) *Inspection of Reports of Use by copyright owners and featured artists.* The Collective shall make copies of the Reports of Use for the preceding three

years available for inspection by any sound recording copyright owner or featured artist, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner or featured artist, and the copyright owner's or featured artist's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

* * * * *

(g) *Authority to agree to special reporting arrangements.* A Collective is authorized to agree with Services concerning reporting requirements to apply in lieu of the requirements set forth in this part.

■ 7. Add new §§ 370.6 and 370.7 to read as follows:

§ 370.6 Late reports of use.

(a) *Late fee.* A Service shall pay a late fee for each instance in which any Report of Use is not received by the Collective in compliance with the regulations in this part by the due date. Such late fee shall be a monthly percentage of the payment associated with the late Report of Use, where such percentage is the percentage rate specified for late payments in the applicable regulations setting forth royalty rates and terms for Services of that type. The late fee shall accrue from the due date of the Report of Use until a fully compliant Report of Use is received by the Collective or the relevant royalties are distributed pursuant to paragraph (b) of this section, provided that, in the case of a timely provided but noncompliant Report of Use, the Collective has notified the Service within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(b) *Proxy distribution.* In any case in which a Service has not provided a compliant Report of Use required under this part for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, and the board of directors of the Collective determines that further efforts to seek missing Reports of Use from the Service would not be warranted, the Collective may determine that it will distribute the royalties associated with the Service's missing Reports of Use on the basis of a proxy data set approved by the board of directors of the Collective.

§ 370.7 Correction of reports of use and statements of account.

If a Service discovers that it has submitted a Report of Use or statement of account for a particular reporting period that is in error, the Service should promptly deliver to the Collective a corrected Report of Use or statement of account, as applicable. However, more than 90 days after the Service's first submission of a Report of Use or statement of account for a particular reporting period, as the case may be, the Service cannot claim credit for a reduction in royalties by submitting a corrected Report of Use or statement of account for the reporting period. Subject to the foregoing, when a Service submits a corrected Report of Use or statement of account for a prior reporting period, the Collective may allocate any upward or permitted downward adjustment in the Service's royalty obligations to the usage reported on the Service's next Report of Use provided in the ordinary course.

Dated: February 20, 2014.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2014–09798 Filed 5–1–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2012–0557; FRL–9910–30–Region 10]

Approval and Promulgation of Implementation Plans; Swinomish Indian Tribal Community; Tribal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a Tribal implementation plan (TIP) submitted by the Swinomish Indian Tribal Community (SITC or the Tribe). The TIP was submitted to the EPA on June 28, 2012, and supplementary submittals were received on September 24, 2013, November 18, 2013, and January 28, 2014. The TIP establishes regulations for open burning that will apply to all persons within the exterior boundaries of the Swinomish Reservation (the Reservation). The EPA approved the SITC for treatment in the same manner as a State (TAS) to regulate open burning on the Swinomish Reservation under the Clean Air Act (CAA or the Act) on February 16, 2010. This action proposes to federally approve the TIP. If the EPA finalizes this approval, the provisions of the TIP would become federally enforceable. Upon the effective date of a final action to approve the TIP, the SITC's open burning TIP would replace the Federal Implementation Plan (FIP) provisions regulating open burning within the exterior boundaries of the Swinomish Reservation.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0557, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *EMail: vaupel.claudia@epa.gov.*

C. *Mail:* Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

D. *Hand Delivery:* U.S. EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Claudia Vergnani Vaupel, Office of Air, Waste, and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0557. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties