Rules and Regulations

Federal Register
Vol. 62, No. 74
Thursday, April 17, 1997

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2703

Employee Responsibilities and Conduct

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Removal of rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is repealing its rule providing an employee exemption from application of the financial conflict of interest prohibition at 18 U.S.C. 208(a). The removal of this rule is in response to publication by the Office of Government Ethics (OGE) of a superseding, executive branch-wide rule that describes the circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived.

EFFECTIVE DATE: April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006; telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's rule, codified at 29 CFR 2703.3, an employee's ownership of shares of stock, bonds, or other corporate securities and shares in a mutual fund, regulated fund, or regulated investment company was exempted from application of the financial conflict of interest prohibition at 18 U.S.C. 208(a) if the aggregate fair market value of such holdings did not exceed $5,000 in a single enterprise. On December 18, 1996, OGE published a final rule entitled ''Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest),'' which superseded the Commission's rule. *See* 61 FR 66830–66851, Dec. 18, 1996, as corrected at 62 FR 1361, Jan. 9, 1997. OGE's new rule, codified at 5 CFR Part 2640 and made effective January 17, 1997, describes the circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. The removal of 29 CFR 2703.3 does not affect the Commission's prohibited financial interests rule, codified at 5 CFR 8401.102. *See* 61 FR 39869–39870, July 31, 1996.

II. Matters of Regulatory Procedure

The Commission has determined that the removal of 29 CFR 2703.3 is not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that the removal of 29 CFR 2703.3 would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because the removal of 29 CFR 2703.3 does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2703

Conflict of interests, Government employees.

For the reasons set forth in the preamble, the Federal Mine Safety and Health Review Commission is amending title 29 of the Code of Federal Regulations as follows:

PART 2703—[AMENDED]

1. The authority citation for part 2703 is revised to read as follows:

Authority: 5 U.S.C. 7301; 5 CFR 2638.202.

§ 2703.3 [Removed]

2. Section 2703.3 of 29 CFR is removed.

Dated: April 10, 1997.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 97–9848 Filed 4–16–97; 8:45 am]

BILLING CODE 6735–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86–7B]

Cable Compulsory Licenses: Definition of Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is adopting final regulations recognizing that satellite master antenna television (SMATV) systems are eligible as cable systems under section 111 of the Copyright Act to obtain a compulsory license to retransmit broadcast signals to their subscribers. The regulations provide guidance as to who should file and how to report distant signals.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Office, Library of Congress, Washington, D.C. 20540, (202–707–8380) or Telefax (202–707–8366).

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., establishes a mechanism by which cable systems may obtain a compulsory license to make secondary transmissions to their subscribers of copyrighted works performed on broadcast stations. A compulsory license is attractive to users of copyrighted material because it gives them guaranteed access to and a guaranteed price for copyrighted works, and avoids the costs of negotiating with each individual copyright owner. As a result, many providers of broadcast signals have sought to qualify as cable systems under section 111, so that they may obtain a cable compulsory license.

Consequently, on October 15, 1986, the Copyright Office published a Notice of Inquiry inviting public comment on whether satellite master antenna television systems (SMATV), multichannel multipoint distribution

systems (MMDS),[1] or satellite carriers[1] qualify as cable systems under section 111 of the Copyright Act. 51 FR 36705 (Oct. 15, 1986). As part of the inquiry, the Office solicited specific comments on how an individual SMATV operation qualifying as a cable system would file statements of account, and on who would be deemed the owner of a SMATV system. The inquiry concerning SMATV systems was based on the following understanding of how a SMATV operates:

> SMATV systems use TVROs [television receive-only satellite dish] to receive transmissions via satellite, and a master antenna for receipt of over the air television signals. The programming is then combined and distributed by cable to subscribers, primarily in apartment houses and other multi-unit residential buildings.

51 FR 36706 (1986).

After analysis of the comments to the Notice of Inquiry, the Copyright Office concluded that SMATV systems could qualify as cable systems and issued a Notice of Proposed Rulemaking proposing regulations by which SMATV systems could obtain a compulsory license to retransmit broadcast signals. 56 FR 31580 (July 11, 1991). At that time, the Office also acknowledged its practice of accepting filings from SMATV operators, without ruling on their sufficiency or adequacy, during the period that the Office considers whether such filings are appropriate. 56 FR 31596 (1991). The Office further advised those SMATV operators, who had previously filed Statements of Account during prior accounting periods without guidance or knowledge of the new rules, that they need not amend these filings. This understanding, however, does not preclude any facility from amending its prior filings under the new regulations, after they are issued in final form.

Comments

Responding to the proposed regulations on the eligibility of SMATV systems for the cable compulsory license, the Office received direct comments from:

—Liberty Cable Company, Inc. (Liberty), a SMATV system operator in the New York City area.
—MaxTel Cablevision, a SMATV system owner and operator, Western Cable Communications, Inc., a SMATV system owner and operator, and National Private Cable Association, an association of SMATV systems operators, equipment manufacturers, vendors, and program distributors, jointly (MaxTel et. al.);
—Mid-Atlantic Cable, Stellar Communications, Inc., TeleCom Satellite Systems Corp., Telesat Cablevision, Inc., 21st Century Technology Group, Inc., all SMATV system operators, and National Satellite Programming Network, Inc., a provider of programming and support services to SMATV systems operators, jointly (Mid-Atlantic et. al.);
—the Motion Picture Association of America, Inc. (MPAA), a trade association that represents copyright owner-claimants for section 111 royalties;
—the National Cable Television Association (NCTA), a cable television trade association;
—National CableSystems Associates, (NCSA) owner and operator of 25 SMATV systems in the Atlanta, Georgia area;
—Pepper & Corazzini, a law firm representing independently owned and cable-affiliated SMATV systems;
—Satellite Television of New York Associates, d/b/a Community Home Entertainment, (Community), the SMATV operator of Co-Op City, Bronx, New York;
—Spectradyne, Inc. (Spectradyne), provider of free-to-guest satellite video programming to hotels; and
—Turner Broadcasting System, Inc. (TBS), licensee of superstation WTBS, Atlanta, Georgia.

The Office also received reply comments from:

—MaxTel, *et. al.;*
—MPAA;
—Major League Baseball, the National Basketball Association, and the National Hockey League (the Professional Sports Leagues); and
—NCTA.

Eligibility for the Section 111 Compulsory License

The following commentators agree with the Copyright Office's conclusion that SMATV systems qualify as cable systems for section 111 purposes: Community, Liberty, Maxtel et. al., Mid-Atlantic et. al., MPAA, NCSA, Pepper & Corazzini, Spectradyne, and TBS.

NCTA takes no position on the question of SMATV eligibility.

The Professional Sports Leagues oppose the eligibility of SMATV systems as cable systems because they argue that Congress intended to draw a distinction between traditional cable and other retransmission media, such as MATV systems (the predecessor systems to SMATVs, similar in all respects to SMATV systems except without the capacity to receive satellite transmissions) when they exempted MATV systems from copyright liability in section 111, so long as they retransmitted only local signals to their subscribers. Professional Sports Leagues, reply comments at 7–8. Thus, having afforded MATV systems such an exemption, the Professional Sports Leagues argue that the remainder of section 111 is intended to apply to traditional cable systems. The Professional Sports Leagues also argue that the section 111 compulsory license was based on economic necessity, and that in 1976, traditional cable systems could not exist without the compulsory license, but such economic necessity was not true of MATV systems then, or SMATV systems now. Reply comments at 8.

This argument was raised in the previous round of comments and responded to by the Office in the 1991 Notice of Proposed Rulemaking where the Office said that the section 111(a)(1) exemption was intended merely to ensure that residents of multiple unit dwellings had access to local television signals. 56 FR 31595 (July 11, 1991). The section 111(a)(1) exemption does not prohibit a master antenna television system from importing distant signals nor does it address the consequences of importing distant signals. The Office considered that such a system would have copyright liability. Whether it must meet that liability through negotiation with the copyright owners or could meet it by obtaining a compulsory license is the issue, and the fact that Congress gave MATV systems an exemption for local retransmissions does not affect the analysis.

Nor does the Office agree that the analysis should depend on whether SMATV systems would still be economically viable without the compulsory license. As the Professional Sports Leagues themselves point out, many cable systems today would be economically viable without the compulsory license, but nothing in section 111 would render a cable system ineligible because it was economically sound. The viability of a provider of broadcast signals with or without the compulsory license is not the question; the question is whether Congress intended the providers to be included in section 111.

TBS agrees that SMATV systems qualify as cable systems, but disagrees

[1] On January 29, 1992, the Office concluded its inquiry into the definition of a ''cable system'' in Docket No. 86–7B and issued a regulation denying both ''wireless'' cable operators and satellite carriers eligibility for the cable compulsory license. 57 FR 3284 (January 29, 1992). Subsequent to the issuance of this regulation, Congress passed the Satellite Home Viewer Act of 1994, Public Law 103–369, which amended the definition of a ''cable system'' in section 111 to include ''wireless'' cable systems, such as the multichannel multipoint distribution systems.

with certain aspects of the Copyright Office's analysis. It argues that the Office should not look to whether a particular video provider constitutes a ''local medium of limited availability,'' or to whether the FCC has affirmatively approved retransmissions by a particular type of facility, but should confine itself to addressing whether a SMATV system ''retransmits broadcast signals to paying subscribers by wires, cables, or other communications channels.'' TBS, comments at 13–14. In other words, TBS argues that the Copyright Office should only look at the section 111 definition of a cable system. However, as the Office has stated previously, section 111 must be construed in accordance with Congressional intent and as a whole, not just in reference to one particular section. 57 FR 3292 (Jan. 29, 1992). The Office notes that at the time Congress created the cable compulsory license, the FCC regulated the cable industry as a highly localized medium of limited availability, suggesting that Congress, cognizant of the FCC's regulations and the market realities, fashioned a compulsory license with a local rather than a national scope. This being so, the Office retains the position that a provider of broadcast signals be an inherently localized transmission media of limited availability to qualify as a cable system. 56 FR 31595 (July 11, 1991).

It is therefore the Office's conclusion, after considering the above comments, that SMATV systems are cable systems for purposes of section 111.

Identifying a SMATV System

While the Copyright Office has discussed the eligibility of SMATV systems for the cable compulsory license and described how a SMATV system operates in its initial Notice of Inquiry, the Office has chosen not to define a SMATV system in its regulations, although SMATV systems present unique compulsory license reporting issues which require clarification in the Copyright Office's rules. None of the commentators raised the issue, suggesting that the nature and operation of a SMATV system is generally understood within the industry. We note, too, that the Federal Communications Commission, while regulating SMATV systems in various ways, has never defined a SMATV system in its regulations. Yet, all parties must operate with a common understanding as to what is a SMATV system. To this end, the Office believes an examination of the FCC regulatory policy toward SMATV systems is useful for determining the characteristics of a SMATV system.

Since 1966, the FCC's definition of a cable system excluded those systems serving multiple unit dwellings. See, *Second Report and Order on CATV Regulation*, 2 FCC 2d 725 (1966). These excluded systems were apparently originally MATVs (Master Antenna Television Systems), but were later thought to include SMATVs. In the 1984 Cable Act, Congress specifically excluded from the definition of a ''cable system'' ''a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way * * *.'' 47 U.S.C. 522(7) (1984). The House Report to the Cable Act described the exemption as applying to ''a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings (in other words, a satellite master antenna television system), unless such facility or facilities use a public right-of-way.'' H.R. Rep. No. 934, 98th Cong., 2d Sess. 44 (1984).

Congress modified the section 522(7) exemption in the Telecommunications Act of 1996. The section now exempts from the definition of a cable system ''a facility that serves subscribers without using any public right-of-way.'' 47 U.S.C. 522(7) (1996). The new exemption certainly continues to include SMATV systems, but has been broadened to include other types of retransmission facilities such as wireless cable.

While the Office believes that the history of communications regulation of SMATV systems is relevant to determining what is a SMATV system, we acknowledge that it is not dispositive for the copyright inquiry. We do not believe that the FCC requirement of not crossing a public right-of-way is important for section 111 purposes because the distinction only determines whether such a facility will be regulated as a cable system for FCC purposes, as opposed to defining what a SMATV system is or does. Consequently, we are identifying as SMATV systems only those facilities which receive television signals from satellites and retransmit them to subscribers residing in multiple unit dwellings, such as apartment complexes and hotels.

Party Responsible for Filing the Statement of Account and Remitting Royalties

In the Notice of Proposed Rulemaking, the Office proposed that the party responsible for filing the statement of account and remitting royalties on behalf of a SMATV system should be the building owner where the SMATV system is operating, not the entity that provides the signals and maintains the facility.

This was proposed for two reasons. First, it was observed that satellite carriers are often the signal providers for a building, and to allow a satellite carrier to designate itself as the owner of the cable system could qualify a satellite carrier as a cable system, a result contrary to the Office's conclusion that satellite carriers are not cable systems.

Second, designating the distributors of the broadcast signals as the filer might result in lower reported gross receipts, because the distributor would report the rate it charged the building, but not any add-ons, if there were any, that the building owner might charge the residents or guests.

1. Concerns About Requiring Building Owners To File

The Office's question about who should be the filer elicited the greatest amount of discussion from the commentators. Uniformly, the comments state that the filer should not necessarily be the building owner. The commentators' greatest concern is that if the responsibility to file is placed on the building owner, many building owners will be inclined to avoid the responsibility by either replacing the SMATV system with a traditional cable system or ceasing to provide video programming altogether. These concerns were addressed in the comments. See Spectradyne, comments at 3–4; NCSA, comments at 6–7; Mid-Atlantic et. al., comments at 4; and Community, comments at 3–4.

2. Comments Addressing Copyright Office's Concerns

Many of the commentators who believe the system operator, not the building owner, should be the filer, sought to allay the Office's concerns about satellite carrier eligibility and the potential for underreporting gross receipts.

As to whether satellite carriers that distribute signals to SMATV systems would qualify as cable systems, Pepper and Corazzini assert,

> The satellite carrier would never be in a position to designate itself as the cable system. Where the owner of a hotel or multi-unit dwelling provides the service itself, it purchases the signals from the satellite carrier or the carrier's distributor. The satellite carrier does not exercise any control or management responsibility over the SMATV system, nor does the carrier have

any contractual privity with the subscribers. This is true whether the SMATV service is provided by the hotel or an owner of a multi-unit dwelling or by an [sic] SMATV operator.

Pepper & Corazzini, comments at 5.

Similarly, Maxtel *et. al.* states,

It is not the satellite carrier who is the signal distributor to the customers of the SMATV operator any more than that satellite carrier is the signal distributor to the customers of the traditional franchised cable television operator. The satellite carrier merely distributes signals to the headend facility of either the SMATV operator or the cable franchisee * * * Contrary to the direct transmission between a satellite carrier and an individual single family home TVRO [television receive-only satellite dish], there is always an intermediary retransmitter between the satellite carrier and the subscriber residing within an apartment complex, for example. Thus, the satellite carrier would never be designated as the owner of the cable system for filing purposes and the Copyright Office need not be concerned over any anomaly with its determination that ''satellite carriers do not and cannot qualify for the cable compulsory license.''

MaxTel *et. al.*, comments at 5.

Spectradyne addresses the possibility, disputed by Pepper & Corazzini and MaxTel *et. al.*, that a satellite carrier could both deliver the distant signal and be the SMATV system operator. It argues that the Copyright Office's concerns can be met in the case of a satellite carrier which happens also to be a SMATV operator, because ''the [compulsory] license would apply only to the SMATV element of the satellite carrier's business. In order to be free from copyright infringement liability for the remaining portions of its operation (ground to transponder to ground) the satellite carrier would either have to qualify as a passive carrier or negotiate copyright licenses. There is no anomaly in this.'' Spectradyne, comments at 5.

The commentators also believe that the potential for underreporting the gross receipts can be avoided.

Spectradyne states that ''any fear of revenue under-reporting can be relieved by imposing on system operators the obligation to report not only amounts received by them but the higher of the amounts they receive and any amounts collected by the hotel operator from guests for the privilege of viewing the tier of service at issue.'' Spectradyne, comments at 6–7.

MaxTel *et. al.* posits three possible situations concerning bulk rates that may or may not reflect the total gross receipts.

First, most SMATV operators contracting with private property owners do not provide such service on a bulk rate basis, but rather charge individual subscribers directly for the service. Second, most property owners desiring a bulk rate contract do so to increase occupancy, and thus do not even charge a premium for the cable service. Third, traditional franchised cable television operators also enter into bulk rate contracts with private property owners, in which the owner can charge the residents a higher fee than the property owner paid the cable franchisee for the service. Yet the Copyright Office has not found the cable system owner in that circumstance to be the property owner as opposed to the cable franchisee * * * If the Copyright Office wishes to rectify the fact that the gross receipts figure will necessarily not include any additional charges rendered by a property owner authorizing service under a bulk rate contract, then the Copyright Office should adopt regulations applicable to both SMATV operators and cable franchisees.

MaxTel et. al., comments at 7.

Mid-Atlantic et. al. argues that the definition of the SMATV system operator can be made flexible enough so that if there is no additional charge by the building owner, the business operating the SMATV system is the SMATV system operator, but if there is an additional charge by the building owner, as reflected in subscription agreements with the individual subscribers in the building, then the building owner would be the one designated in that instance as the SMATV system operator. Mid-Atlantic *et. al.*, comments at 5.

3. Commentators' Recommended Definition of Filer

Community recommends that the filer be ''the entity that provides the service to the actual subscriber or to the tenant or unit owner.'' Community, comments at 4.

Liberty recommends a definition of the filer that would allow either the building owner or the SMATV system operator to make the filings and the payments, according to whichever arrangement made sense to the SMATV system operator and building operator, provided that the building operator could designate an agent to sign the Statement of Account. Liberty, comments at 1–2. Similarly, Spectradyne recommends ''permitting either the building owner or the system operator to file the statement of account.'' Spectradyne, comments at 4.

Mid-Atlantic et. al. recommends that the filer should be the operator of the SMATV system, whether that is the building owner or a third party who has a contract with the building owner to provide the service. Mid-Atlantic *et. al.*, comments at 2.

MaxTel *et. al.* recommends that the filer should be ''the owner of the headend facility and the recipient of the subscriber revenues.'' MaxTel *et. al.*, comments at 9. MPAA supported this recommendation. MPAA, reply comments at 16. Similarly, NCSA recommends defining the filer as ''that party who both provides the cable TV service to the ultimate subscriber or television viewer and also receives payment from said subscriber or television viewer for the service either directly or indirectly through a third party.'' NCSA, comments at 11. Likewise, Pepper & Corazzini recommends that the filer be ''the entity that is in charge of the operation of the system and the collection of subscriber revenues.'' Pepper and Corazzini, comments at 8.

4. Discussion

The Office appreciates the concern expressed by SMATV system operators that if the building owner is required to be the filer, some building owners might refuse to take on that responsibility, to the detriment of the SMATV system operator. Therefore, the Office agrees that the building owner who is uninvolved with the SMATV system operation may not, in that circumstance, be the best one to file the statement of account.

In searching for the best solution, the Office is inclined to agree with NCSA, that the filer should be the party that provides the retransmission service and receives the payment, either through a bulk rate charged to the building owner, or by individually billing the subscriber, or by any other billing arrangement.

The Office also appreciates the distinction drawn by Spectradyne between a satellite carrier acting in its capacity as a SMATV system operator and a satellite carrier acting in its capacity as the deliverer of the distant signal. The Office agrees that the satellite carrier could also be the SMATV system operator for that portion of the satellite carrier's operation for which it performs the functions of a SMATV system operator, but not for the direct delivery of the distant signals.

Similarly, a building owner could also be a SMATV system operator, if the building owner is the one that provides the retransmission service and collects the payments from the subscribers.

Furthermore, the Office acknowledges the points raised by MaxTel *et al.* about bulk rates and the importance of ensuring that any rules adopted for SMATV system are consistent with the Office's policy toward traditional cable systems. Therefore, the gross receipts that shall be reported shall be those collected by the filer, either directly from the subscribers or indirectly through a third party.

In no case shall gross receipts for the SMATV facility be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission by the SMATV facility. As a result, if the building owner is the SMATV system operator because he or she provides the retransmission service, but does not charge his or her residents, tenants, or guests, because it is a ''free'' service, the building owner, nonetheless, reports as gross receipts the amount that he or she pays the satellite carrier for the cost of bringing in the broadcast signals.

Calculation of Royalties for Form 3 SMATV Systems

In the Notice of Proposed Rulemaking, the Office stated that SMATV systems that file as Form 3 systems—those grossing $292,000 or more per semiannual accounting period—would be required to comply with the signal carriage and market quota regulations applied by the FCC to cable systems when making their royalty calculations, even though SMATV systems that did not use the public rights-of-way were not, in fact, subject to such regulations.

This proposal is supported by MPAA and NCTA, who each argued that if SMATV systems are to qualify as cable systems, they should be treated the same way as traditional cable systems. MPAA, reply comments at 16–17; NCTA, comments at 2.

This proposal is opposed by Community. Community argues that the Copyright Office is bound to follow the law, and that, under FCC rules, SMATV systems not using the public rights-of-way were not subject to distant signal quotas. Therefore, the Copyright Office may not impose 3.75% rate charges for signals that SMATV systems were permitted to import before 1981. Furthermore, Community states that it received an opinion letter from the General Counsel of the Copyright Office in 1984 confirming Community's interpretation of the law. Community, comments at 2–3, Attachment C.

In reply, NCTA argues that the Copyright Office is not so restrained as Community asserts, and that the Office may make common sense responses to problems that arise during the implementation of section 111, so long as those responses are not inconsistent with congressional intent. NCTA believes it is logical for the Office to conclude that since Congress intended new technologies to be eligible for the cable license, it did not intend to treat these new technologies more favorably than traditional cable systems. Finally, NCTA notes that the Copyright Office requires newly constructed cable systems to pay 3.75% rate royalties even though they were never subject to the FCC's distant signal rules. NCTA, reply comments at 1–3.

The Office's main goal in administering section 111 is to implement Congress' intent. Congress recently addressed the issue of how to apply the definition of a cable system to new technologies when it amended section 111(f) to include multichannel multipoint distribution service systems, otherwise known as MMDS or ''wireless cable,'' as cable systems. Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477. Congressional intent is manifest in both the Senate and House reports. The Senate report stated:

> The committee intends ''wireless'' cable and traditional wired cable systems to be placed on equal footing with respect to their royalty obligations under the cable compulsory license, so that one not have an unfair advantage over the other due to differences in their regulatory status under FCC rules. The committee expects the Copyright Office, in applying section 111 to ''wireless'' cable systems, should treat ''wireless'' cable systems as if they were subject to the same FCC rules and regulations that are applicable to wired cable systems.

Sen. Rep. 407, 103d Cong., 2nd Sess., at 14 (1994).

Similarly, the House Report stated,

> Because the purpose of this legislation is to place wired and wireless cable systems on a level playing field, in calculating the fees payable by wireless systems, reference should be made to the same FCC rules that would be applicable if the system were wired, e.g., the distant signal quota rules for purposes of determining whether the 3.75% of gross receipts rate is applicable.

H. R. Rep. 703, 103d Cong., 2nd Sess., at 19 (1994).

Any reliance that Community believes should be placed on the 1984 opinion letter from the Office's General Counsel is now clearly superseded by this expression of Congress' intent. Therefore, the Office will require Form 3 SMATV systems to calculate their distant signal royalties on the same basis as traditional cable systems.

Commonly Owned or Controlled SMATV Systems in Contiguous Communities and SMATV Systems Operating From the Same Headend

Section 111(f) states that for purposes of determining the royalty fee, two or more cable systems in contiguous communities under common ownership or control, or operating from one headend, shall be considered as one system.

In the Notice of Proposed Rulemaking, the Office stated that it had received a request from NCTA to address its petition to reinterpret section 111(f) to provide that two or more cable systems would have to be in contiguous communities under common ownership and control and operating from one headend before they would be required to file as one individual cable system. The Office responded to NCTA's petition by stating that the issue was being addressed in another rulemaking proceeding and would not be examined here. 56 FR 31596 (July 11, 1991).

However, several commentators submitted comments on a related issue asking what constitutes ''contiguous communities'' in the context of SMATV systems.

Pepper & Corazzini argues that because most SMATV systems do not use the public rights-of-way, by their very nature, they are stand alone operations and are not contiguous with each other, even when they are in the same community. Pepper & Corazzini believe they should be considered contiguous only when they are physically on adjoining properties or are interconnected by wire or radio. Pepper & Corazzini, comments at 7. These comments are supported by MaxTel et al. MaxTel, reply comments at 3–4.

MPAA and NCTA disagree with Pepper & Corazzini and MaxTel et al. They both argue that SMATV systems should be treated the same way as cable systems and that the same interpretation of contiguous communities should apply. NCTA proposes that the Office should require commonly owned or controlled SMATV systems to be considered a single cable system when they are located in the same or contiguous communities, or when they operate from the same headend. NCTA, comments at 2–3. MPAA supports NCTA's proposal. MPAA, reply comments at 16.

The Copyright Office agrees with MPAA and NCTA that Congress' intent is to treat new technologies on the same basis as traditional cable systems. It would be inequitable if a SMATV system operator, serving several buildings within a community, were considered to be operating separate cable systems, while a cable operator in that same community serving several non-adjoining households is considered a single system.

Therefore, the Office concludes that a SMATV system operator is a single cable system when it serves multiple unit dwellings in the same community or in contiguous communities, using political boundaries to determine when communities are contiguous.

Accordingly, the Copyright Office and the Library of Congress adopts the following rules.

List of Subjects in 37 CFR Part 201

Cable compulsory license, Cable systems, Satellite master antenna television systems.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II, is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.17 [Amended]

2. Section 201.17(b)(1) is amended by adding ''In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission.'' after the first sentence.

3. Section 201.17(b)(2) introductory text is amended by adding ''The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees.'' after the third sentence.

4. Section 201.17(e)(2)(i) is amended by adding ''The ''owner'' of the cable system is the individual or entity that provides the retransmission service and collects payment from the end user either directly or indirectly through a third party.'' after the first sentence.

Dated: April 3, 1997.

Marybeth Peters,

Register of Copyrights.

Approved By:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–9919 Filed 4–16–97; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0029a; FRL–5697–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate five rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_X emissions from boilers, steam generators, process heaters, stationary internal combustion engines, stationary gas turbines, and glass melting furnaces in the San Francisco Bay area. EPA has evaluated the rules and is taking direct final action to approve them under provisions of the CAA regarding EPA actions on SIP submittals, and SIPs for national primary and secondary ambient air quality standards. The rules are being approved into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

DATES: This action is effective on June 16, 1997 unless adverse or critical comments are received by May 19, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

Applicability

This document addresses EPA's direct final action for the following BAAQMD rules: Regulation 9, Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9—Nitrogen Oxides from Stationary Gas Turbines; Regulation 9, Rule 11—Nitrogen Oxides and Carbon Monoxide from Utility Electric Power Generating Boilers; and Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces.

These BAAQMD rules were adopted on September 15, 1993, January 20, 1993, September 21, 1994, November 15, 1995 and January 19, 1994, respectively. They were submitted by the State of California on July 23, 1996. The rules were found to be complete on January 17, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.[1] EPA is taking direct final action to approve all five rules into the SIP.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992 document should be referred to for further information on the NO_X requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas.[2]

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] The San Francisco Bay Area was designated as a moderate nonattainment area for ozone, and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).