• Should the Commission consider a delayed implementation schedule for any conflicts of interest rules that it may adopt for SB SEFs? Why or why not? How would such a delayed implementation schedule affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages and disadvantages of doing so? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Are there other rules or sets of rules with which compliance should be required, or which must be effective, before SB swaps subject to the mandatory trade execution requirement are required to be traded? If so, which ones, and why?

• Should the Commission phase in compliance with the mandatory trade execution requirement by type of market participant? For example, should the Commission phase in this requirement by market participant type in the manner proposed by the CFTC in its Clearing and Trade Execution Implementation Proposal? [190] Why or why not? What would the advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

• In determining when to require compliance with the mandatory trade execution requirement, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

III. Solicitation of Comments

The Commission intends to monitor closely the imposition of the new regulatory regime upon SB swaps and SB swap market participants to determine to what extent, if any, additional regulatory action may be necessary. The Commission is soliciting comment on all aspects of this Statement and the guidance it provides regarding compliance dates for the rules to be adopted under Subtitle B of Title VII. Comments received will be addressed in the relevant final rulemakings to which they pertain.

By the Commission.

Dated: June 11, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–14576 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[190] *See supra* note 53 and accompanying text for a discussion of the CFTC's proposals to phase in compliance with the swap clearing, trading, trade documentation, and margining requirements arising under Subtitle A of Title VII of the Dodd-Frank Act by category of market participant. *See also supra* note 59 and accompanying text noting that, in the CFTC Clearing and Trade Execution Implementation Proposal, the CFTC stated that before the mandatory clearing of swaps begins, the product and entity definitions, the end-user exception from mandatory clearing, and the rules pertaining to the segregation of customer collateral must be adopted and that before swap market participants could be required to comply with a trade execution requirement, the CFTC must adopt final rules related to swap execution facilities and designated contract markets.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2012–5]

Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Copyright Office is proposing a new regulation to implement provisions in the Satellite Television Extension and Localism Act of 2010 (''STELA'') that will allow copyright owners to audit certain Statements of Account filed with the Copyright Office. Cable operators and satellite carriers pay royalties to and file Statements of Account with the Copyright Office every six months as required by law for the use of the statutory licenses that allow for the retransmission of programming carried on over-the-air broadcast signals. However, until the passage of STELA the licenses did not authorize the copyright owners, who are the beneficiaries of the royalties collected, to audit the information on Statements of Account and the amounts paid for use of the statutory licenses.

DATES: Comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on August 13, 2012. Reply comments must be received in the Office of the General Counsel no later than 5 p.m. EDT on September 12, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/*. The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Erik Bertin, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Every five years Congress considers legislation to reauthorize the statutory license that allows satellite carriers to retransmit television programs that are embodied in distant broadcast transmissions, provided that the satellite carrier files a Statement of Account and pays royalties to the Copyright Office. 17 U.S.C. 119. In May 2010, Congress passed the Satellite Television Extension and Localism Act of 2010 (''STELA''), Public Law 111–175, 124 Stat. 1218, for this purpose. STELA reauthorized the Section 119 statutory license for satellite carriers and, in addition, it made certain amendments to the Section 119 license and a second statutory license, set forth in Section 111 of title 17 of the United States Code, that allows cable systems to retransmit television and radio programs that are embodied in local and distant broadcast transmissions.

A significant change to the law is the addition of new provisions directing the Register of Copyrights to develop procedures for the verification of the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Copyright Office under Sections 111 and 119. Specifically, Section 119(b)(2) directs the Register to

''issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under [that] subsection.'' Similarly, Section 111(d)(6) directs the Register to ''issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to [section 111] of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph [111(d)(6)(A)] is able to confirm the correctness of the calculations and royalty payments reported therein.''

These provisions authorize the implementation of a process by which copyright owners, whose works are retransmitted under the statutory licenses, can for the first time verify the accuracy of the royalty payments made by cable operators and satellite carriers. They also make clear that the Register should consider the interests of the parties who will be subject to this verification procedure. For example, Section 111(d)(6) directs the Register to give cable operators an opportunity to review the auditor's conclusions, to remedy any errors identified in the auditor's report, and to correct any underpayments that the auditor may discover. Congress indicated that a single auditor should conduct the verification procedure on behalf of all copyright owners and that the Register should limit the number of times that a party may be subjected to an audit. Congress also directed the Register to establish procedures for protecting the confidentiality of non-public financial and business information that may be provided to the auditor during the course of his or her investigation.

Generally speaking, the proposed regulation is based on similar regulations that the Office has adopted for the verification of Statements of Account and royalty payments that are made under the statutory licenses for the use of ephemeral recordings and the digital performance of sound recordings under 17 U.S.C. sections 112(e) and 114(f), and for the importation and distribution of or the manufacture and distribution of digital audio recording devices under 17 U.S.C. chapter 10. *See* generally 37 CFR 201.30, 260.5, 260.6, 261.6, 261.7, 262.6, and 262.7. The Office also considered a Petition for Rulemaking [*http://www.copyright.gov/docs/soaaudit/soa-audit-petition.pdf*] which was filed on behalf of the copyright owners who are the beneficiaries of the royalties that are paid under the Section 111 and 119 statutory licenses.[1] The copyright owners asked the Office to adopt separate regulations for Statements of Account that are filed by cable operators and satellite carriers and provided the Office with proposed language for each regulation. Separate regulations, however, do not appear to be necessary because the basic elements for verifying and auditing Statements of Account filed under Section 111 and 119 should be the same. Therefore, the Office is proposing a single regulation setting forth a process for verifying Statements of Account that would apply to cable operators and to satellite carriers. In formulating this regulation, the Office has adopted some of the suggestions included in the Petition for Rulemaking and welcomes comments on the proposed regulation from copyright owners, cable operators, satellite carriers, accounting professionals, and other interested parties.

II. Verification Procedures

A. Cable Operators and Satellite Carriers Would Be Subject to the Same Verification Procedure

As discussed above, Section 119(b)(2) directs the Register to issue regulations to allow ''interested parties'' to verify the Statements of Account and royalty fees that are filed with the Copyright Office under Section 119. The term ''interested parties'' was not defined, and the statute does not provide any guidance on the nature and extent of this verification procedure. For example, Section 119(b)(2) does not indicate whether satellite carriers should be allowed to review the auditor's conclusions or to correct any underpayments that the auditor may discover. Nor does it provide for the confidential treatment of information that the satellite carrier may provide to the auditor. Section 111(d)(6), on the other hand, contains detailed instructions regarding the verification of Statements of Account and royalty payments filed by cable operators, including the number of times that a cable system may be audited, the qualifications of the auditor, and the deadline for initiating an audit, among other requirements.

However, the differences between the two provisions do not preclude the Register from adopting a single regulation for verification procedures conducted under Section 111(d)(6) and 119(b)(2). Nor is there anything in Section 111(d)(6) that directly contradicts the requirements of 119(b)(2) (or vice versa). Section 119(b)(2) allows ''interested parties'' to verify and audit Statements of Account and royalty payments filed by a satellite carrier. By contrast, Section 111(d)(6) only allows ''copyright owners whose works were embodied in the secondary transmission of primary transmissions'' to audit Statements of Account and royalty payments filed by a cable operator. While the statutory language in Section 111(d)(6) is more precise and identifies who may request an audit, it is nonetheless reasonable to assume that the only parties who would have an interest in verifying Statements of Account and royalty payments filed under Section 119 would be copyright owners whose works were embodied in a secondary transmission made by the party that filed that Statement. Moreover, virtually the same set of copyright owners participates in proceedings before the Copyright Royalty Board concerning the distribution of royalties under the cable and satellite licenses.

Consequently, because Congress provided a blueprint for the verification of Statements of Account in Section 111(d)(6) and because those requirements are similar to verification procedures that the Office has adopted in the past, the Office is inclined to use this provision as the framework for the regulations governing the verification of Statements of Account and royalty fees filed by both cable operators and satellite carriers.[2] Adoption of the same procedures for both statutory licenses has advantages. It will reduce regulatory complexity for copyright owners, it will promote fairness among statutory licensees, and it will encourage auditors to develop best practices that could be used regardless of whether an audit involves Statements of Account filed by a cable operator or a satellite carrier. The copyright owners apparently agree with this approach. Although they proposed separate regulations for cable operators and satellite carriers their drafts are essentially identical, except

[1] Representatives of Program Suppliers (commercial entertainment programming); Joint Sports Claimants (professional and college sports programming); Commercial Television Claimants (local commercial television programming); Music Claimants (musical works included in television programming); Public Television Claimants (noncommercial television programming); Canadian Claimants (Canadian television programming); National Public Radio (noncommercial radio programming); Broadcaster Claimants Group (U.S. commercial television stations), and Devotional Claimants (religious television programming) filed the petition jointly.

[2] As the proposed regulation applies to both cable operators and satellite carriers, they are collectively referred to as ''statutory licensees.''

for one difference which is discussed in more detail in the next section.

The Office invites comments on whether Section 111(d)(6) should be used as the framework for the verification of Statements of Account filed under Sections 119(b)(2) or whether there are policy or administrative reasons for adopting a different approach for the verification of Statements and royalties filed by cable operators and satellite carriers.

B. Retroactivity

As discussed above, the copyright owners have asked the Office to adopt separate regulations for cable operators and satellite carriers and they have provided the Office with a proposed draft for each regulation. The primary difference between the two suggested regulations is that the copyright owners' draft regulation for satellite carriers would apply retroactively, while their draft regulation for cable operators would apply on a prospective basis only. Specifically, the copyright owners' draft regulation for cable operators would apply to Statements of Account for accounting periods beginning on or after January 1, 2010 (*i.e.,* the semiannual accounting period that was in effect when the President signed STELA into law on May 27, 2010). By contrast, the copyright owners' draft for satellite carriers would apply to any Statement of Account, even if the Statement was filed with the Office before STELA was enacted.

In support of this distinction, copyright owners argue that Section 119(b)(2) of ''STELA permits verification of Statements of Account filed by satellite carriers prior to the 2010–1 accounting period.'' Petition for Rulemaking at 4. However, Section 119(b)(2) does not contain any language that expressly permits copyright owners to audit a Statement of Account for an accounting period that predated the enactment of STELA. Nor does it contain any language that expressly permits the Office to adopt regulations providing for the verification of Statements of Account on a retroactive basis. On the contrary, when STELA does address this issue, it clearly states that copyright owners may audit a cable operator's Statements of Account, but only with respect to ''accounting periods beginning on or after January 1, 2010 * * *.'' Section 111(b)(6). The fact that the verification procedure for cable operators only applies to the accounting period that was in effect when STELA was enacted and any subsequent accounting period is clear evidence that Congress did not intend to impose a retroactive verification requirement on cable operators. On the other hand, the lack of similar language in Section 119 is not an indication that Congress intended to allow retroactive verification of Statements of Account filed by satellite carriers.

''Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.'' *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 208 (1988) (citations omitted). *See also Motion Picture Association of America, Inc.* v. *Oman,* 969 F.2d 1154, 1156 (D.C. Cir. 1992) (explaining that the Register of Copyrights does ''not have authority to promulgate retroactive rules unless Congress gives [her] that authority in express terms'').

Because the copyright owners are asking ''for something the Office could not give as a matter of law,'' *Motion Picture Association of America,* 969 F.2d at 1156, *i.e.,* allowing copyright owners to audit Statements of Account for accounting periods that preceded the 2010/1 accounting period, the Office has not adopted the draft language that they proposed for the verification of Statements of Account filed by satellite carriers.

C. Initiation of an Audit

The proposed regulation follows the same approach that is used to initiate audit and verification procedures for examining Statements of Account filed under the Section 112 and 114 licenses and under Chapter 10. In keeping with this approach, a copyright owner would have to notify the Copyright Office in writing in order to initiate an audit procedure, and at the same time, it would have to serve a copy of that notice on the statutory licensee that would be subject to the audit. The Office does not intend to create a form for this notice, but at a minimum, the proposed regulation requires the copyright owner to identify the Statement(s) of Account and accounting period(s) that would be included in the audit and the statutory licensee that filed those Statement(s) with the Office. In addition, the notice of intent to audit would have to provide specific information about the copyright owner filing the notice, including its name, address, telephone number, facsimile number, and email address (if any), and the copyright owner would have to provide a brief statement establishing that it owns at least one work that was embodied in a secondary transmission made by that licensee.

Under the proposed regulation a notice of intent to audit filed by one copyright owner would preserve the right of all interested copyright owners to participate in the audit procedure. This would mean that once the Office has received a notice of intent to audit a particular semiannual Statement of Account, it would not accept another notice of intent to audit that same Statement. As discussed in Section G below, a satellite carrier or cable operator that owns one cable system would be subject to no more than one audit per year, while a cable operator that owns multiple cable systems would be subject to no more than three audits per year. This would mean that once the Office has received a notice of intent to audit a particular satellite carrier or a particular cable system that owns a single cable system, the Office would not accept another notice of intent to audit that licensee until January 1st of the following year. Likewise, once the Office has received three notices of intent to audit a particular multiple cable system operator within a specific calendar year, it would not accept another notice of intent to audit that same licensee until January 1st of the following year.[3]

The filing of the notice would then require the Office to publish a notice in the **Federal Register** within 30 days after receiving the notice of intent to audit. The **Federal Register** notice would identify the Statement(s) of Account and statutory licensee that would be subject to audit, it would identify the copyright owner that filed the notice of intent to audit, and it would provide appropriate contact information for that party. Any other copyright owner that wishes to participate in the audit of the Statement(s) of Account identified in the **Federal Register** notice would have to contact the copyright owner that filed the notice of intent to audit. Copyright owners that join in the audit would be entitled to participate in the selection of the auditor, and they would be entitled to participate in the selection of additional cable systems that may be included in an expanded audit, if the audit involves a multiple cable system operator which has been shown to have

[3] However, if a copyright owner filed a notice of intent to audit a particular Statement of Account or a particular statutory licensee in calendar year 2013 and if that audit was still ongoing as of January 1, 2014, the Office would accept a notice of intent to audit filed in calendar year 2014 concerning other Statements filed by that same licensee.

underpaid its royalties during the initial examination. In addition, copyright owners that join in the audit would be entitled to receive a copy of the auditor's report and they would be required to pay for the auditor for his or her work in connection with the audit.

Conversely, a copyright owner that failed to join the audit within 30 days would not be permitted to participate in the selection of the auditor or the selection of cable systems that would be included in an audit of a multiple system operator. Nor would they be entitled to receive a copy of the auditor's report. Moreover, a copyright owner that failed to join the audit within the time allowed would not be permitted to conduct its own audit of the semiannual Statement(s) of Account identified in the **Federal Register** notice at a later time. If the licensee identified in the **Federal Register** notice is a satellite carrier or a single cable system operator, a copyright owner that failed to join the audit within 30 days would not be permitted to conduct another audit of that same licensee until the following year because under the proposed regulations these systems shall be subject only to a single audit during a given calendar year. *See* Section G, Frequency of the Audit Procedure. Likewise, if the Office already published three **Federal Register** notices involving a multiple cable system operator, a copyright owner that failed to join any of these audits within the time allowed would not be permitted to conduct another audit of Statements filed by that same licensee for additional accounting periods until the following year.

D. Designation of the Auditor

Under the copyright owners' proposal, the Office would be responsible for selecting a qualified and independent person to conduct the audit, and copyright owners and statutory licensees would be given an opportunity to comment on the proposed auditor before the final selection is made. Copyright owners who wished to participate in the audit and to receive a copy of the auditor's final report would have 15 days after the selection of the auditor to notify the Office of their intention to join the audit process, and the Office would be responsible for posting the names of these copyright owners on its Web site.

The Office has considered the copyright owners' approach but can see little justification for this degree of involvement by the Copyright Office. Section 111(d)(6)(A) directs the Office to ''establish procedures for the designation of a qualified independent auditor,'' but it does not require the Office to make this designation. The Office does not have the knowledge, experience, or resources needed to select an appropriate auditor or to manage the selection process beyond the initial notification step, and doing so would be a dramatic departure from the audit regulations that the Office has adopted in the past. *See* 37 CFR 201.30(d)(2), 260.5(c), 260.6(c), 261.6(c), 261.7(c). Therefore, the Office is not inclined to adopt the copyright owners' proposal. Moreover, the Office is unaware of any problems with this initiation practice as used in the verification process for auditing statements of account filed under the Section 112 and 114 licenses or under Chapter 10.

The Office believes that the copyright owners should be responsible for designating an auditor who will verify the Statement(s) of Account and royalty payments on their behalf and for resolving any disputes amongst themselves over the selection of the auditor. Likewise, the Office believes that the copyright owners who join in the audit should be responsible for paying the auditor for his or her work in connection with the audit, and for resolving any disputes amongst themselves concerning the allocation of those costs.[4] The Office can establish regulatory guidelines for the verification process, but it strongly believes that the copyright owners are better situated to assume the costs and the responsibility for selecting the auditor and coordinating the verification procedure, including the identification of those copyright owners who wish to participate in the verification process.

To this end, the proposed regulation would establish clear guidelines for the process, such as defining what constitutes a ''qualified'' and ''independent'' auditor. Specifically, an auditor would be considered ''qualified'' if he or she is a certified public accountant. Consistent with Section 111(d)(6)(A)(ii), an auditor would be considered ''independent'' if he or she is not an officer, employee, or agent of a copyright owner for any purpose other than the audit. In addition, an auditor would be considered ''independent'' for purposes of this procedure if that person is considered to be ''independent'' as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants (''AICPA''), in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA, and in the Interpretations thereof issued by the Auditing Standards Division of the AICPA. *See, e.g.,* AICPA Code of Professional Conduct, ET Section 101 (Independence), 102 (Integrity and Objectivity), 191 (Ethics Rulings on Independence, Integrity, and Objectivity), available at *http://www.aicpa.org/interestareas/professionalethics/resources/codeofconduct/pages/default.aspx.* However, the Office does agree with the copyright owners that an auditor should be disqualified if there is any conflict of interest that would prevent him or her from participating in the verification procedure, and notes that conflicts of interest are prohibited under AICPA Code of Professional Conduct Section 102–2.

The standard for evaluating an auditor's independence is based on the Office's audit regulation for digital audio recording technology, which has been in effect since 1996. *See* 37 CFR 201.30(j)(3). The Office welcomes comments from accounting professionals and other interested parties as to whether accountants currently use this standard to evaluate their independence or whether the standard has changed over the past 16 years.

If a statutory licensee has reason to believe that an auditor is not qualified or independent, it would have to raise those concerns with the copyright owner(s) who selected the auditor before the audit begins. If the parties are unable to resolve the matter, the cable operator or satellite carrier could raise its concerns with AICPA's Professional Ethics Division or with the State Board of Accountancy that licensed the auditor. Consistent with the verification procedures that the Office has adopted for other statutory licenses, the auditor would be allowed to proceed with the audit while his or her qualifications were under review. *See* 37 CFR 201.30(j)(1).

E. Time Period for Conducting an Audit

Section 111(d)(6) allows copyright owners to audit Statements of Account and royalty payments filed with the Copyright Office for any accounting period beginning on or after January 1, 2010. In order to provide cable operators with a measure of certainty and to encourage copyright owners to exercise their audit rights in a prompt manner, Congress directed the Register to set a deadline for initiating an audit

[4] The copyright owners' proposal states that the copyright owners that join in the audit ''shall pay the costs of the Qualified Independent Auditor.'' However, they did not indicate whether those costs should be split evenly among the copyright owners or whether those costs should be divided in some other manner.

procedure. Specifically, Section 111(d)(6)(D) states that the Register shall ''permit requests for verification of a statement of account to be made only within 3 years after the last day of the year in which the statement of account is filed.''

Taking its cue from the statutory text, the proposed regulation would provide that the deadline for initiating a verification procedure would be calculated from the last day of the year in which the Statement of Account was filed. Thus, the final date for filing a notice of intent to audit a particular Statement would be December 31, regardless of whether the Statement was filed by a cable operator or a satellite carrier, whether the Statement covers the first or second half of the year, or whether the Statement was filed before or after the filing deadline. If the copyright owner intends to audit more than one Statement of Account, the notice of intent to audit would have to be filed within three years after the last day of the year that the earliest Statement was filed with the Office. For example, a notice of intent to audit three Statements of Account filed by a satellite carrier on July 30, 2010, January 30, 2011, and July 30, 2011 would have to be received in the Office on or before December 31, 2013.

The copyright owners' draft regulation would require the Office to designate an auditor within 60 days after the notice of intent to audit was published in the **Federal Register**. The auditor would be required to contact the statutory licensee within 30 days thereafter, and the statutory licensee would be required to make its records available to the auditor 30 days later. The Office assumes that the amount of time required for an audit will vary depending on the number and complexity of the Statements of Account that will be subject to review. The only statutory requirement is that the request for verification must be made ''within 3 years after the last day of the year in which the statement of account is filed.'' 17 U.S.C. 111(d)(6)(E). Therefore, the Office is not inclined to set a precise deadline for when the auditor should be selected, when the audit should begin, or when the audit should be completed. Nor is it aware that failure to establish a regulatory timeline for completing these tasks has been a problem with the verification of Statements of Accounts filed under other statutory licenses.

F. Retention of Records

The copyright owners' draft regulation would require statutory licensees to keep records that may be necessary to confirm the correctness of the calculations and royalty payments reported in a Statement of Account for at least five years after the Statement has been filed. While the Office agrees that statutory licensees should be required to retain their records until the deadline for auditing a Statement of Account has passed, it is not clear that such records need to be maintained for five years. *See, e.g.,* 37 CFR 260.4(f) and 261.5(f) (requiring books and records relating to the payment of statutory licensing fees to be kept for three years).

Under the proposed regulation, a statutory licensee would be required to retain such records for a minimum of three and a half years (*e.g.,* 42 months) after the last day of the year in which the Statement of Account was filed with the Office. Should the Office announce the receipt of a notice of intent to audit a particular Statement, the statutory licensee would be required to retain its records concerning the calculations and royalty payments reported in that Statement for at least three years after the date that the auditor delivers his or her final report to the copyright owner(s). This will preserve the records for the benefit of all parties in the event that the copyright owner(s) decide to take legal action based on the facts and conclusions set forth in the auditor's report. Conversely, if the Office does not announce the receipt of a notice of intent to audit within three and a half years (*e.g.,* 42 months) after the last day of the year in which a particular Statement of Account was filed, the statutory licensee would no longer be required to retain its records concerning that Statement, at least for the purpose of verifying the Statement of Account under this regulation.

G. Frequency of the Audit Procedure

Section 111(d)(6)(A)(i) appears to provide copyright owners with a single opportunity to verify a particular Statement of Account. This provision directs the Register to ''establish procedures for the designation of a qualified independent auditor with exclusive authority to request verification of such a statement of account on behalf of all copyright owners. * * *'' Once an auditor has been selected, he or she would conduct that audit on behalf of ''all'' copyright owners, regardless of whether they decide to join the audit or not. Once the auditor has completed his or her review of that Statement, there is no apparent need for additional audits, because all copyright owners would have been given an opportunity to audit that Statement already. In light of this reading, the proposed regulation explains that a Statement of Account may be audited no more than once.

However, this basic limitation to a single audit for each Statement of Account does not address Congress's directive to ''limit the frequency of requests for verification for a particular cable system and the number of audits that a multiple system operator can be required to undergo in a single year.'' 17 U.S.C. 111(d)(6)(D). The statute does not indicate what those limits should be and there is no legislative history for STELA. It is clear that Congress did not intend to overburden cable operators that own and operate multiple systems, but striking an appropriate balance is not an easy question.

Under the copyright owners' proposal, it appears that a satellite carrier or a cable operator that owns one cable system would be subject to no more than one audit per year. However, a cable operator that owns more than one system would be subject to as many as three audits per year.

The Office included the copyright owners' proposal in the initial draft of the regulation, because the statute does not provide any meaningful guidance concerning the phrase ''limit the frequency of requests for verification.'' However, this is merely a starting point for further discussion on this issue. The Office welcomes comment from interested parties concerning the limit on the total number of audits that a satellite carrier, a cable system operator that owns a single cable system, or a multiple system operator can be required to undergo in a single year, and in particular, whether there is a legitimate reason for treating cable operators differently depending on whether they own one cable system or more than one system (*i.e.,* whether the multiple system operator should be subject to a single audit or up to three audits per year).

By contrast, the proposed regulation does not fully embrace the copyright owners' proposal concerning multiple system cable operators, because it does not appear to place any meaningful limit on the number of cable systems that can be included within each audit. Allowing the auditor to evaluate all of the cable systems owned by a multiple system operator may be unduly burdensome for the operator—depending on the number of systems within its portfolio. In order to protect the interests of a multiple system operator, the proposed regulation directs the auditor to study a sampling of the cable systems owned by that operator. At the same time, the regulation protects the interests of copyright owners by allowing them to

maximize their opportunity by including more than one Statement of Account in each audit.

According to the AICPA, ''the basic concept of sampling is well established in auditing practice.'' American Institute of CPAs, Statement on Auditing Standards § 350.06 at 516, available at *http://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00350.pdf*. It involves ''the application of an audit procedure to less than 100 percent of the items within * * * [a] class of transactions for the purposes of evaluating some characteristic of the * * * class.'' *Id.* at 515. ''The size of a sample necessary to provide sufficient audit evidence depends on both the objectives and the efficiency of the sample.'' *Id.*

The proposed regulation does not require the auditor to review a specific number of cable systems, because the number of systems owned by each multiple system operator will vary. On the one hand, an audit involving five or six cable systems may impose an undue burden on the operator if it owns only a half dozen systems. On the other hand, if a multiple system operator owns dozens of cable systems, *e.g.,* Time Warner, an audit involving only five of those systems may not be statistically significant given the size of the company.

To address this conundrum, the Office believes that the interests of multiple system cable operators, copyright owners, and the auditor would be better served by allowing the auditor to study a percentage of the cable systems owned by a multiple system operator. The proposed regulation states that, in the case where there are two or more systems under common ownership, audits should involve no more than fifty percent of those systems. However, if the auditor discovers an underpayment of five percent or more in any Statement of Account filed by that operator, the size of the sample could be expanded to include any and all of the systems owned by that operator. The specific cable systems that would be included within the sample of the expanded audit would be selected by the copyright owner(s) who elected to participate in the audit. Setting the trigger at five percent would be generally consistent with the copyright owners' proposal for allocating the cost of the audit, which would require the auditor's fee to be paid by the statutory licensee if the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that was included in the audit. However, this is merely a preliminary suggestion, and the Office solicits comments from all interested parties.

The Office invites comments on whether a sampling approach should be used for audits involving a multiple system operator, and if so, whether an audit involving up to fifty percent of the systems owned by a particular operator is likely to produce a statistically significant result or whether this threshold would be unduly burdensome for the operator and, if so, what percentage would be appropriate. The Office also invites comments on whether copyright owners should be allowed to increase the number of systems subject to audit if the auditor discovers an underpayment of royalties, and if so, whether the underpayment should be higher or lower than five percent in order to trigger this requirement.

H. Proposed Remedies for Cable Operators and Satellite Carriers

STELA directed the Register to ''require a consultation period for the independent auditor to review its conclusions with a designee of the cable system.'' In addition, Congress directed the Register to ''establish a mechanism for the cable system to remedy any errors identified in the auditor's report and to cure any underpayment identified,'' and to ''provide an opportunity to remedy any disputed facts or conclusions.'' *See* 17 U.S.C. 111(d)(6)(C)(i)–(ii). Congress did not indicate whether the regulation should provide these remedies to satellite carriers, but as discussed above there is nothing in Sections 111(d)(6)(C)(i)–(ii) or 119(b)(2) that prevents the Office from taking this approach and the Office can think of no good reason to adopt different approaches for the two licenses. Therefore, the Office is proposing a single regulation for both cable operators and satellite carriers which would allow any statutory licensee to review the auditor's conclusions before the auditor delivers his or her report to the copyright owner(s), to correct errors and underpayments identified in the auditor's report, and to dispute any of the facts and conclusions set forth in that report. Each of these remedies is discussed below.

1. Consultation With the Statutory Licensee

Once the auditor has completed his or her review of the Statements of Account, the proposed regulation directs the auditor to prepare a written report setting forth his or her conclusions. The proposed regulation explains that the auditor should deliver a copy of that report to the statutory licensee before it is delivered to any of the copyright owner(s) that are participating in the audit. However, there is one exception to this rule. The auditor may deliver a copy of his or her report directly to the copyright owner(s) without sharing it with the statutory licensee if the auditor has reason to suspect that the statutory licensee has committed fraud and that disclosing his or her conclusions to the statutory licensee would prejudice further investigation of that fraud. The Office has taken a similar approach in other audit regulations. *See* 37 CFR 261.6(g), 261.7(f), 262.6(f), 262.7(f).

Consistent with Section 111(d)(6)(C)(i), the auditor would be required to review his or her report with a designee of the statutory licensee before it is delivered to the copyright owner(s). Specifically, the auditor would be required to consult with a designee of the statutory licensee within 30 days after the auditor has delivered his or her report to the licensee. The Office assumes that the consultation would take place at a time and place that is mutually convenient for both parties, and that it would be conducted in person, by telephone, or video conference as the parties may agree. Because the issues presented in each audit will be unique, the regulation does not provide specific topics that the parties should review. But as discussed in Section H.3 below, if the statutory licensee discovers any factual errors or erroneous conclusions in the auditor's report, the designee must bring those issues to the auditor's attention during the consultation.

The Office invites comment on whether the regulation should provide a precise amount of time for the auditor to meet and confer with the statutory licensee's designee, and if so, whether 30 days would be a sufficient amount of time for the consultation period.

2. Correcting Errors and Curing Underpayments Identified in the Auditor's Report

STELA directed the Register to ''establish a mechanism for the cable system to remedy any errors identified in the auditor's report and to cure any underpayment identified.'' The Office already has a process that allows cable operators and satellite carriers to amend their Statements of Account and to make additional royalty payments that may be due. *See* 37 CFR 201.11(h) and 201.17(m). The Office is inclined to use the same approach here.

If the auditor concludes that any of the information in a Statement of

Account is incorrect or incomplete, that the calculation of the royalty fee was incorrect, or that the statutory licensee failed to deposit the royalties owed with the Office, the statutory licensee may correct those errors by filing an amended Statement of Account or by submitting supplemental royalty payments to the Office. To do so, the licensee must comply with the procedures set forth in 37 CFR 201.11(h)(1) and 201.17(m)(3), including the obligation to pay interest on any underpayment that may be due and the requisite filing fee set forth in 37 CFR 201.3.

The copyright owners apparently agree with this approach. Their proposed regulation states that the statutory licensee ''may * * * remedy any errors identified in the [auditor's] report * * * and cure any underpayment identified (subject to the filing fee and interest requirements generally applicable to late, corrected, or supplemental Statements of Account and royalty fees).'' Petition for Rulemaking at 10. However, the copyright owners' proposal would give licensees only a brief opportunity to correct errors or underpayments identified in the auditor's report. Specifically, corrections and underpayments would have to be made during a 30-day consultation period when the auditor would be required to discuss his or her tentative findings with a representative of the licensee.

The statute directs the Office to establish a mechanism for correcting errors identified in the auditor's report and for curing underpayments, but it does not specify a deadline for making these adjustments. The proposed regulation would allow the Office to accept corrected Statements of Account and supplemental royalty payments before, during, or after a verification procedure. Certainly, it would be in the best interest of the licensee to file an amended Statement of Account and any royalties fees owed as soon as possible to avoid accruing additional interest payments and possible exposure to an infringement suit.

The Office welcomes comment on whether the proposed regulation provides statutory licensees with an adequate opportunity to ''remedy any errors identified in the auditor's report and to cure any underpayments identified,'' as required by Section 111(d)(6)(C)(ii). The Office also welcomes comment on whether it would be beneficial to give statutory licensees a specific deadline for correcting errors in their Statements of Account and for making supplemental royalty payments. If so, would 30 days be a sufficient amount of time, and should the deadline be based on the date that the auditor delivers his or her preliminary report to the statutory licensee or the date that the auditor delivers his or her final report to the copyright owner(s)?

3. Disputing the Facts and Conclusions Set Forth in the Auditor's Report

If the statutory licensee disagrees with any of the facts or conclusions set forth in the auditor's report, the licensee's designee must raise those issues during the initial consultation with the auditor. If the auditor agrees that a mistake has been made, he or she should correct those errors before the report is delivered to the copyright owner(s). If facts or conclusions set forth in the report remain in dispute after the consultation, the licensee may provide the auditor with a written response setting forth its views. The licensee's deadline for providing this response would be two weeks (e.g., 14 calendar days) after the date of the initial consultation between the auditor and the licensee's representative.

Within 60 days after the auditor delivers his or her report to the statutory licensee, the auditor would be required to prepare a final report setting forth his or her conclusions and would be required to deliver that report to the copyright owner(s) that participated in the audit process. At the same time, the auditor would be required to provide the statutory licensee with a copy of the final report. (The copyright owners made a similar suggestion in their draft regulation, but they did not specify a deadline for the delivery of the final report nor did they offer to share the final report with the statutory licensee.) If the statutory licensee prepared a written response contesting the facts or conclusions set forth in the auditor's report, the auditor would be required to include that response as an attachment to his or her final report to the copyright owner(s).

The Office invites comment on whether the proposed regulation provides statutory licensees with an adequate ''opportunity to remedy any disputed facts or conclusions'' as required by Section 111(d)(6)(C)(iii). The Office also welcomes comment on whether two weeks would be a sufficient amount of time for the statutory licensee to prepare a written response to the auditor's report (if any), and whether 60 days would be a sufficient amount of time for the auditor to prepare his or her final report for the copyright owners.

I. Cost of the Audit Procedure

The statute does not indicate whether the costs of the audit should be paid by the copyright owners or by the statutory licensee. The Office has, however, considered this same issue in its regulations concerning the audit of Statements of Account and royalty payments made under Section 112, Section 114, and Chapter 10, and it is inclined to use the same approach in this regulation. *See* 37 CFR 201.30(i), 260.5(f), 260.6(f), 261.6(g), 261.7(g), 262.6(g), 262.7(g).[5]

As a general rule, the copyright owner(s) who selected the auditor would be expected to pay for the auditor's work in connection with the audit. Copyright owner(s) who do not participate in the verification procedure would not be required to pay for the auditor's services, and consequently they would not be entitled to receive a copy of the auditor's report, although they would benefit from the payment of any additional royalty fees made as a result of the audit. However, if the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that was included in the audit, the proposed regulation would require the auditor's fee to be paid by the statutory licensee that filed that Statement with the Office with the proviso that if a court, in a final judgment (*i.e.,* after all appeals have been exhausted) rejects that determination, the copyright owners would have to reimburse the licensee for its payment of the auditor's services. The copyright owners included a similar proposal in their draft regulation.

The Office invites comment on whether the regulation should include a cost-shifting provision, and if so, whether the percentage of underpayment needed to trigger a cost shifting to the statutory licensee should be more or less than five percent.

J. Confidentiality

STELA directed the Register to issue regulations ''to provide for the confidential verification'' of Statements of Account and royalty payments, and to ''establish procedures for safeguarding all non-public financial

[5] There is no legislative history for STELA, although a prior iteration of the legislation contained language concerning the verification of Statements of Account. The House Report for the earlier bill stated that ''[t]he rules adopted by the Office shall include procedures allocating responsibility for the cost of audits consistent with such procedures in other audit provisions in its rules.'' *See* Satellite Home Viewer Update and Reauthorization Act of 2009, H. Rep. No. 111–319, 111th Cong., 1st Sess., at 10 (2009).

and business information'' that may be provided during the course of the investigation. The proposed regulation explains that confidential information should be made available for use in the audit procedure, and that access to that information should be limited to the auditor who conducts the procedure. The auditor may share confidential information with his or her employees, agents, consultants, and independent contractors who need access to the information in order to perform their duties in connection with the audit. However, the auditor's employees, agents, consultants, and independent contractors would be required to enter into an appropriate confidentiality agreement governing the use of the confidential information and they could not be employees, officers, or agents of a copyright owner for any purpose other than the audit. In addition, the auditor and any other person that receives confidential information would have to implement procedures to safeguard that information, using at least the same level of security that they would use to protect his or her own confidential information.

The Office also seeks comment on whether there are situations where copyright owner(s) would have a legitimate need to review the confidential information that may be provided by the licensee and, if so, whether the licensee's legitimate interest in safeguarding that information would be adequately protected by adopting a regulation requiring the copyright owner(s) to enter into an appropriate non-disclosure agreement with the statutory license. Under most of the audit regulations adopted by the Office, access to confidential information has been limited to the auditor and his or her employees and agents. *See* 37 CFR 260.4(d)(2), 261.5(d)(2), 262.5(d)(2). The Office's regulations concerning digital audio recording technology allow copyright owners to access confidential information ''for verification purposes,'' but only if the copyright owner is neither owned nor controlled by another manufacturing or importing party that is subject to royalty obligations under Chapter 10. *See* 37 CFR 201.29(d)(1), 201.29(f)(2). By contrast, the regulations concerning ephemeral recordings allow the copyright owners and their attorneys, consultants, and other authorized agents to access confidential information ''[i]n connection with bona fide royalty disputes or claims * * * and under an appropriate confidentiality agreement or protective order * * *''. 37 CFR 262.5(d)(e). The statute provides no guidance on the issue and the copyright owners did not address this issue in their draft regulation. Therefore, the Office seeks comment on whether and, if so, the circumstances under which access to confidential information by copyright owner(s) is appropriate and the best approach for protecting the information from unauthorized disclosure in such situations.

III. Conclusion

The Office seeks comment from the public on the subjects discussed above related to the implementation of the audit provisions adopted by Congress with the passage of the Satellite Television Extension and Localism Act of 2010.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR Chapter II, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 reads as follows:

Authority: 17 U.S.C. 702, 17 U.S.C. 111(d)(6), and 17 U.S.C. 119(b)(2).

2. Add new § 201.16 to read as follows:

§ 201.16 Verification of a Statement of Account and royalty fee payments for secondary transmissions made by cable systems and satellite carriers.

(a) *General.* This section prescribes general rules pertaining to the verification of a Statement of Account and royalty fees filed with the Copyright Office pursuant to sections 111(d)(1) and 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(b) *Definitions.* (1) *Auditor* means a qualified and independent accountant who is not an officer, employee or agent of a copyright owner, but has been selected to audit a Statement of Account on behalf of copyright owners under sections 111(d)(6) and 119(b)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(2) The term *cable system* has the meaning set forth in § 201.17(b)(2) of this chapter.

(3) *Copyright owner* means the copyright owner of a work embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010.

(4) *Generally accepted auditing standards (GAAS)* means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) The term *satellite carrier* has the meaning set forth in section 119(d)(6) of title 17 of the United States Code.

(6) The term *secondary transmission* has the meaning set forth in section 111(f)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(7) *Statement of Account* or *Statement* means a semiannual Statement of Account filed with the Copyright Office for an accounting period beginning on or after January 1, 2010 under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(8) *Statutory licensee* or *licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(c) *Notice of intent to audit.* Any copyright owner that intends to audit a semiannual Statement of Account must notify the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice shall identify the statutory licensee that filed the Statement(s) with the Copyright Office, the Statement(s) and accounting period(s) that will be subject to the audit, and the copyright owner that filed the notice, including its name, address, telephone number, facsimile number, and email address, if any. In addition, the notice shall include a statement establishing that the copyright owner owns a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in the Statement(s) of Account that will be subject to the audit. The copyright owner shall serve the notice of intent to audit on the statutory licensee at the same time that the notice is filed with the Copyright Office. Within 30 days after the notice has been received in the Office, the Office will publish a notice in the **Federal Register** announcing the receipt of the notice of intent to audit.

(d) *Selection of the auditor.* Any other copyright owner who wishes to participate in the audit of the Statement(s) of Account identified in a notice of intent to audit must notify the copyright owner that filed the notice of intent to audit within 30 days of the publication of the notice in the **Federal Register**. Those copyright owner(s) who have agreed to participate in the audit

shall designate an independent and qualified auditor to audit the Statement(s) on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in those Statement(s). Any dispute about the selection of the auditor shall be resolved by these copyright owner(s). Promptly after the auditor has been selected, these copyright owner(s) shall provide the statutory licensee with the auditor's name, address, telephone number, facsimile number, and email address, if any.

(e) *Independence and qualifications of the auditor.* (1) The auditor shall be qualified and independent as defined in this subsection. If the statutory licensee has reason to believe that the auditor is not qualified or independent, it shall raise the matter with the copyright owner(s) who selected the auditor before the commencement of the audit. If the matter is not resolved, the statutory licensee may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the auditor's State Board of Accountancy while the audit is being performed.

(2) An auditor shall be considered qualified if:

(i) He or she is a certified public accountant,

(ii) He or she is not an officer, employee, or agent of a copyright owner for any purpose other than the audit;

(iii) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules, and Interpretations of such Code applicable generally to attest engagements; and

(iv) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

(f) *Scope of the audit.* The audit shall be performed in accordance with generally accepted auditing standards (GAAS).

(g) *Consultation.* Before delivering a report to any copyright owner(s), except where the auditor has a reasonable basis to suspect fraud and that disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall deliver a copy of that report to the statutory licensee and shall review his or her conclusions with a designee of the licensee within 30 days thereafter. If the statutory licensee disagrees with any of the facts or conclusions set forth in the report, the licensee may provide the auditor with a written response setting forth its views within two weeks after the date of the initial consultation between the auditor and the licensee's designee. If the auditor agrees that there are errors in the report, he or she shall correct those errors before the report is delivered to the copyright owner(s). The auditor shall include the licensee's written response, if any, as an attachment to his or her report before it is delivered to any copyright owner(s).

(h) *Corrections and supplemental payments.* Where the auditor has concluded that any of the information given in a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee payable for a particular accounting period was incorrect, or that the amount deposited in the Copyright Office for that period was too low, a licensee may file a correction to the Statement of Account and supplemental royalty fee payments with the Office in accordance with the procedures set forth in §§ 201.11(h) or 201.17(m).

(i) *Distribution of the auditor's report.* No less than 60 days after the date that the auditor delivered his or her report to the statutory licensee and subject to the confidentiality provisions set forth in paragraph (m) of this section, the auditor shall deliver a written report to the copyright owner(s) who retained the auditor's services setting forth his or her conclusions. At the same time the auditor shall deliver a copy of that report to the statutory licensee. The copyright owner(s) shall retain this report for a period of not less than three years.

(j) *Costs of the audit.* The copyright owner(s) who selected the auditor shall pay the auditor for his or her work in connection with the audit, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that is subject to the audit, in which case, the auditor's fee shall be paid by the statutory licensee that deposited that Statement with the Copyright Office with the proviso that if a court, in a final judgment (i.e., after all appeals have been exhausted) rejects that determination, the copyright owners will reimburse the licensee for its payment of the auditor's services.

(k) *Frequency of verification.* (1) Subject to the limitations in paragraph (k)(3) of this section, a copyright owner may include more than one Statement of Account in its notice of intent to audit, but each Statement of Account shall be subject to audit only once. Once a notice of intent to audit a particular semiannual Statement of Account has been received in the Office, a notice of intent to audit the same Statement of Account will not be accepted for publication in the **Federal Register**.

(2) A satellite carrier or a cable operator that owns a single cable system shall be subject to no more than one audit per calendar year.

(3) A cable operator that owns multiple cable systems shall be subject to no more than three audits per calendar year. Each audit shall be limited to a sampling of no more than fifty percent of the cable systems owned by that operator, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account filed by that operator, in which case, the audit may be expanded to include any and all of the cable systems owned by that operator. The specific cable systems to be included within each sampling shall be selected by the copyright owner(s) who retained the auditor's services. The limitation on the number of systems under common ownership that can be audited in a calendar year does not limit in any way the number of Statements of Account submitted by the selected systems that may be audited in a calendar year.

(l) *Retention of records.* For each semiannual Statement of Account that a statutory licensee files with the Copyright Office for accounting periods beginning on or after January 1, 2010, the licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in each Statement for at least three and a half years after the last day of the year in which that Statement was filed with the Office. If the Office publishes a **Federal Register** notice announcing the receipt of a notice of intent to audit a specific Statement of Account, the statutory licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in that Statement for at least three years after the date that the auditor delivers a written report setting forth his or her conclusions to the copyright owner(s) who retained the auditor's services.

(m) *Confidentiality.* (1) For purposes of this section, confidential information shall include any non-public financial or business information pertaining to a Statement of Account that has been subjected to an audit under sections 111(d)(6) or 119(b)(2) of title 17 of the United States Code, as amended by Public Law 111–175. Confidential information also shall include any information so designated in a

confidentiality agreement which has been duly executed between a statutory licensee and any other interested party, or between one or more interested parties; *provided* that all such information shall be made available for the audit procedure provided for in this section.

(2) Access to confidential information under this section shall be limited to:

(i) The auditor; and

(ii) Subject to an appropriate confidentiality agreement, those employees, agents, consultants and independent contractors of the auditor who are not employees, officers, or agents of a copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement of Account or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment.

(3) The auditor and any person identified in paragraph (m)(2)(ii) of this section shall implement procedures to safeguard all confidential information received from any third party in connection with an audit, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the auditor or such person.

Dated: June 8, 2012.

David O. Carson,

General Counsel.

[FR Doc. 2012–14454 Filed 6–13–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0323; FRL–9686–7]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Tennessee: Bristol; Determination of Attainment for the 2008 Lead Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 4, 2012, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a request to EPA to make a determination that the Bristol nonattainment area for the 2008 lead national ambient air quality standards (NAAQS or standard) has attained the 2008 lead NAAQS. In this action, EPA is proposing to determine that the Bristol nonattainment area (hereafter also referred to as the ''Bristol Area'' or ''Area'') has attained the 2008 lead NAAQS. This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2009—2011 period showing that the Area has monitored attainment of the 2008 lead NAAQS. EPA is further proposing that, if EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines shall be suspended for so long as the Area continues to attain the 2008 lead NAAQS.

DATES: Comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0323, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2012–023, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0323. 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 whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.