

against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

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(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

■ 5. Section 260.3 is amended as follows:

■ a. In paragraph (b), by removing "twentieth" and adding "forty-fifth" in its place;

■ b. By revising paragraphs (c), (d) and (e); and

■ c. By adding a new paragraph (f).

The additions and revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct from any of its receipts paid by Licensees under § 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and July 31, 2003, to the Designated Agent, less any amounts previously paid by such period to the Recording Industry Association of

America, Inc., or SoundExchange by September 15, 2003.

■ 6. Section 260.4 is amended as follows:

■ a. In paragraphs (a) and (b), by removing "nonexempt subscription digital transmission service" in each place it appears and adding "nonexempt preexisting subscription service" in its place; and

■ b. By revising paragraphs (d)(1) and (e).

The revisions to § 260.4 read as follows:

§ 260.4 Confidential information and statements of account.

* * * * *

(d)(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

* * * * *

(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, 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 designated agent or such person.

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§ 260.5 [Amended]

■ 7. Section 260.5(b) is amended by removing "nonexempt subscription digital transmission service" and adding "nonexempt preexisting subscription service" in its place.

■ 8. Section 260.6 (revised at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

■ a. By revising paragraphs (a), (b) and (c);

■ b. In paragraph (f), by removing "designated agent" and adding "entity which made the underpayment" in its place; and

■ c. In paragraph (g), by removing "individuals or entities".

The revisions to § 260.6 read as follows:

§ 260.6 Confidential information and statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.*

Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

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§ 260.7 [Amended]

■ 9. Section 260.7 (amended at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

(a) By adding "collecting" before "agent" the first time it appears;

(b) By removing "designated" the second and third time it appears and adding "collecting" in its place; and

(c) By removing "the cost of the administration of the collection and distribution of the royalty fees" and adding "any costs deductible under 17 U.S.C. 114(g)(3)" in its place.

Dated: June 16, 2003.

Marybeth Peters,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.
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