Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Determination Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. However, comments on this section still be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.465, paragraphs (b), (c), (d), (e), and (f) are redesignated paragraphs (c), (d), (e), (f) and (g). A new paragraph (b) is added to read as follows:

§ 117.465 Lafourche Bayou.

* * * * *

(b) The draw of the Valentine bridge, mile 44.7 at Valentine, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least four hours advance notification is given. During the advance notification period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in water traffic occur.

* * * * *

Dated: September 10, 2006.

Joel R. Whitehead,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E6–15561 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–5]

Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office is seeking comment on copyright issues associated with the secondary transmission of digital television broadcast signals by cable operators under the Copyright Act.

DATES: Written comments are due November 6, 2006. Reply comments are due December 4, 2006. September 20, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to Library of Congress, U.S. Copyright Office, 2221 S. Clark Street, 11th Floor, Arlington, VA. 22202, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, D.C. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 430, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Senior Attorney, and Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act (''Act''), title 17 of the United States Code (''Section 111'') provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television station licensed by the Federal Communications Commission (''FCC''). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi–annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

The Motion Picture Association of America, Inc. (''MPAA''), its member companies and other producers and/or distributors of movies, series and specials broadcast by television stations (''Program Suppliers'') and the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League and the Women's National Basketball Association (''Joint Sports Claimants'' or ''JSC'') (collectively, ''Copyright Owners'') have requested that the Copyright Office commence a rulemaking to clarify the applicability of existing Copyright Office rules to the retransmission of digital broadcast signals under the statutory license set forth in Section 111 of the Copyright Act.

The regulatory actions requested by Copyright Owners are properly within the authority of the Copyright Office. 17 U.S.C.111(d) and 702. However, the retransmission of digital broadcast signals under Section 111 raises many issues, some of which require further elucidation before amending Section 201.17 of title 37 of the Code of Federal Regulations (''CFR'' or ''Section 201.17'') and the associated cable Statement of Account forms (''SOAs''). We therefore initiate this Notice of Inquiry (''NOI'') to address the matters raised by the Copyright Owners' Petition for Rulemaking[1]and to seek comment on other possible changes to the Copyright Office's existing rules and cable SOA forms.

[1] The petition and the attachments may be viewed on the Copyright Office website at: *http://copyright.gov/docs/cable/digitalsignals.pdf* and *http://copyright.gov/docs/cable/digitalsignals-attachments.pdf.*

Background

Digital television technology enables a television broadcast station to provide, over–the–air, an array of quality high–definition digital television signals (''HDTV''), standard–definition digital television signals (''SDTV''), and many different types of ancillary programming and data services. In 1997, the FCC adopted its initial rules governing the transition of the broadcast television industry from analog to digital technology,[2] and authorized each individual television station licensee to broadcast in a digital format. *Advanced Television Systems and Their Impact on Existing Television Broadcast Service,* 12 FCC Rcd. 12809 (1997). Since that time, hundreds of television stations have been transmitting both analog and digital signals from their broadcast facilities,[3] and television stations may choose to broadcast in a ''digital–only'' mode of operations, pursuant to FCC authorization. *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* 19 FCC Rcd 18279, 18321–22 (2004). Moreover, a significant number of cable operators have agreed to voluntarily carry both analog and digital broadcast signals from the same broadcast licensee. *See http://www.ncta.com/IssueBrief.aspx?contentId=2716&view=3* (Cable operators voluntarily carrying at least 500 digital television station signals).

It is this trend toward carriage of digital signals, often simultaneously with the transmission of an analog counterpart, that has prompted Copyright Owners to seek clarification of the rules governing a cable system's carriage of broadcast signals under Section 111. However, before proposing new rules, the Copyright Office seeks comment on the proposed changes and a number of associated issues related to the carriage of digital signals.

Applicability of Section 111 to Digital Broadcast Signals

Copyright Owners request that the Copyright Office address the recordkeeping and royalty calculation issues that arise in connection with the carriage of digital broadcast signals by cable operators, provided that the Copyright Office is of the view that Section 111 covers retransmissions of digital broadcast signals. Petition at 5.

In 1976, Congress amended the Copyright Act by adding, *inter alia*, the cable statutory license. In so doing, it explained the rationale supporting the addition of Section 111. According to the legislative history accompanying Section 111 of the Act, Congress recognized that ''cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs.'' H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. at 89 (1976). It also recognized that ''it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system.'' *Id.* Consequently, Congress established a statutory copyright license for the retransmission of those over–the–air broadcast signals that a cable system is authorized to carry pursuant to the FCC regulations then in place.

In structuring the license, Congress made a distinction between primary and secondary transmissions and local versus distant ones in order to identify which transmissions are subject to the statutory license and at what rate. It did not define a broadcast transmission or identify whether a transmission was subject to the statutory license on the basis of the signal's technical characteristics (*i.e.*, an analog signal vs. a digital signal) nor was there a need to make such distinctions because all transmissions at that time were broadcast in an analog format.[4]

Specifically, Section 111(f) of the Act broadly defines ''primary transmission'' as ''a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted,'' and a ''secondary transmission'' as ''the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission [under a narrowly prescribed set of circumstances]...'' It is these secondary retransmissions to the public, where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the FCC, which are subject to statutory licensing.

Such transmissions are then categorized as local or distant based upon the statutory definition of the ''local service area of the primary transmitter,''which ''in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to FCC requirements in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of the FCC's rules (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to sections 76.55(e) or 76.59 of the FCC's rules . . . .''[5]

As seen above, there is nothing in the Act, its legislative history, or the Copyright Office's implementing rules, which limits the cable statutory license to analog broadcast signals. Instead, the cited provisions broadly state that the statutory license applies to any broadcast stations licensed by the FCC or any of the signals transmitted by such stations. Thus, use of the statutory license for the retransmission of a digital signal would not be precluded merely because the technological characteristics of a digital signal differ from the traditional analog signal format. *See Consumer Electronics Association v. FCC*, 347 F.3d 291(D.C. Cir. 2003) (FCC had authority to issue order requiring that 13–inch and larger televisions include tuners capable of receiving and decoding digital television signals under plain language of the 1962 All Channel Receiver Act (''ACRA''), even though ACRA's original intent was to promote and support the viability of analog UHF broadcast stations).

[2] Recently, Congress established February 17, 2009, as the date for the completion of the transition from analog to digital broadcast television. *See* Pub. L. No. 109-171, Section 3002(a), 120 Stat. 4 (2006).

[3] As of October 2005, more than 1,537 television stations nationwide were broadcasting in a digital format. S*ee Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 (2006) (''12th Annual Video Competition Report'') at ¶95.

[4] Section 111 stands in contrast to Section 119, the satellite statutory license, which Congress has amended to cover satellite carrier retransmission of digital broadcast signals. *See Satellite Home Viewer Extension and Reauthorization Act of 2004*, Pub. L. No. 108–447, Title IX, Section 103, 118 Stat. 3393 (2004) (''SHVERA''). The SHVERA contains separate provisions concerning the royalties to be paid for the retransmission of digital broadcast signals by satellite carriers and it affords copyright owners and satellite carriers the opportunity to negotiate royalty rates for digital broadcast signals separate from analog signals. It also contains special rules, exceptions, and limitations regarding the carriage of digital signals, including provisions on the use of one satellite dish to receive all such signals, which subscribers are eligible to receive distant digital signals, and how to test the technical availability of such signals.

[5] Section 201.17(b)(5) of the Copyright Office's rules states that the terms primary transmission, secondary transmission, local service area of a primary transmitter, distant signal equivalent, network station, independent station, and noncommercial educational station have the meanings set forth in Section 111 of the Act.

Even so, questions remain with regard to the application and operation of the cable statutory license structure in the digital television context. For this reason, we are seeking comment on the issues raised by the Copyright Owners' Petition and on additional issues raised herein.

Digital Broadcast Signal Retransmission Issues

Retransmission of a digital television broadcast signal. Today, television broadcasters may choose to transmit their signals in either a digital format or an analog format, or simultaneously in both formats. Some stations have also chosen to make the initial transmission of a new station signal solely in the digital format.[6] Carriage of digital signals by a cable system under the Section 111 license, however, requires a review of the current regulations and reporting practices as developed for analog signals to determine if these practices need to be readjusted in order to ensure accurate and complete reporting under the provisions of Section 111.

First, in the case where the digital signal has or has had an analog counterpart, would the digital broadcast station's television market for Section 111 purposes be the same as the broadcast station's television market for the analog signal? And if the analog signal is considered distant, can the digital counterpart ever be considered local, or vice versa? Second, how should the Copyright Office determine whether a distant digital broadcast signal is permitted or non–permitted for Distant Signal Equivalent (''DSE'') purposes? Third, how does the Copyright Office determine the basis of carriage for a distant digital signal (*i.e.* market quotas, grandfathered status, etc.)? Fourth, what DSE values (for network, educational, independent) should be assigned to digital signals? Fifth, how would the Copyright Office determine the coverage area of a broadcast licensee's digital television transmission for cable copyright purposes, especially in the context of significantly viewed signals?[7]

Would the resolution of these questions be the same in the case where the signal never had an analog counterpart? The Copyright Office seeks answers to these questions concerning the carriage of a digital signal and will consider any related issues identified by the commenters.

Simultaneous Retransmission of Analog and Digital Broadcast Signals. Currently, hundreds of television stations are broadcasting in both an analog and digital format. For example, WRC in Washington, D.C., broadcasts both an analog signal (Channel 4, WRC–TV) and a digital signal (Channel 48, WRC–DT). *See http://www.nbc4.com/tvlistings/index.html.*

Copyright owners acknowledge that some cable systems are separately reporting carriage of digital and analog broadcast signals and, in their view, doing so appropriately.[8] However, they state that it is unclear whether all cable systems are identifying carriage of both types of signals or are doing so in a consistent and uniform manner. According to Copyright Owners, the lack of uniformity in reporting the carriage of both analog and digital broadcast signals necessitates clarification of the Copyright Office's existing regulations.

Specifically, they urge the Copyright Office to clarify that, if a cable operator chooses to carry a television broadcast station's analog and digital signals, that cable operator should identify those signals separately in Space G on its SOA (*e.g.*, as WRC–TV on channel 4 and WRC–DT on channel 48). Copyright Owners assert that separate designation provides notice that a cable operator is carrying digital signals and may be charging subscribers additional fees that should be included in the gross receipts calculation.[9] Moreover, in the context of distant signal carriage, Copyright Owners argue that separate reporting of both the digital and the analog signal is necessary because such carriage would generate an additional royalty obligation.

For purposes of ascertaining the royalties owed, Copyright Owners suggest that where the programming is identical, the DSE values for carriage of a distant analog and a digital signal would be the same. Alternatively, if the programming on the two signals is different (*e.g.*, where the digital signal does not carry network programming), they assert that the DSE values may be different and should be computed separately in accordance with the provisions of Section 111(f). But in either case, Copyright Owners imply that the cable operator would still have to pay for each signal.

Must a cable operator pay separately for carriage of a digital signal and an analog signal where the signals carry identical programming to the subscriber, or does the statutory license allow for a single payment for the delivery of the same programming albeit in two different formats?[10] Would the programming be considered ''different'' if the digital signal included only a subset of the programming from the analog signal or if the digital signal was broadcast in a high definition format? Are cable systems offering such combinations to subscribers and is the Copyright Owners' method of valuation appropriate?

We ask commenters to provide examples of where cable operators are retransmitting the analog and digital signals of the same licensee, but the programming on the primary (or main) digital signal is different than that of the analog signal. We also seek comment on how a cable operator should report the carriage of a digital signal that has been downconverted to an analog signal (at the cable operator's headend) so that subscribers without a digital set top box are able to view such signals.

Retransmission of Digital Multicast Streams. Multicasting is the process by which multiple streams of digital television programming are transmitted at the same time over a single broadcast channel. The eleven largest broadcast groups and their affiliates broadcast more than 937,000 hours of multicast programming during the month of October 2005. This multicast programming included news, weather, sports, religious material, music videos and coverage of local musicians and concerts, as well as foreign language programming (especially, but not limited to, Spanish programming). *See 12th Annual Video Competition Report*, 21 FCC Rcd. 2503 at ¶101.[11]

[6] For example, WHDT–TV–DT, Stuart, Florida, operates as a digital facility but never had a paired analog station. *See Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights,* 16 FCC Rcd 2692 (2001).

[7] As a point of reference, the Copyright Office notes that digital television station's coverage areas are measured by noise limited service contours under current FCC rules, not Grade B contours as is the case for analog stations, *see* 47 CFR 76.54(c).

[8] Cable operators are not required by the FCC to carry both the analog and digital signals of local broadcast stations. *See Carriage of Digital Television Broadcast Signals*, 20 FCC Rcd 4516 (2005).

[9] Gross receipts for the basic service of providing secondary transmissions of primary broadcast transmitters include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. *See* 37 CFR 201.17(b)(1).

[10] We note, for example, that Metrocast Cablevision of New Hampshire has assigned a single value for a number of television stations transmitting both an analog and digital signal. Metrocast Cablevision SA3 Long Form, 2005/1 period, Cable ID # 7438 (as assigned by the Licensing Division of the Copyright Office).

[11] The FCC has decided that if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated multicast programming streams, only one of these streams, the ''primary'' digital video stream, is entitled to mandatory carriage under the Communications Act. *See Carriage of Digital Television Broadcast Signals,* 16 FCC Rcd 2598

For example, Station WRAL in Raleigh, North Carolina, transmits its analog signal (WRAL–TV) on channel 5 and its digital signal (WRAL–DT) on channel 5.1, which simulcasts (in some cases in HDTV) certain of the programming on channel 5. It also transmits a 24–hour news channel (WRAL–NC) on channel 5.2. And, it transmits locally–produced programming on channels 5.3 (WRAL–DT3) and 5.4 (WRAL–DT4). *See http://www.wral.com/wralinfo/index.html.*

Copyright Owners ask the Copyright Office to clarify that a cable operator carrying multicast signals must identify those signals separately in Space G on its SOA form. They state that a cable operator choosing to carry all of the digital channels transmitted by WRAL, for example, should state in Space G of its SOA that it carried WRAL–DT on channel 5.1; WRAL–NC on channel 5.2; WRAL–DT3 on channel 5.3; and WRAL–DT4 on channel 5.4. Copyright Owners assert that separate reporting is necessary in the case of carriage of multiple digital channels, where the copyright owners of the programming on such separate channels may be wholly different from the copyright owners of the programming on the primary digital video stream. We seek comment on the Copyright Owners' suggestions.

Copyright Owners also urge the Copyright Office to require separate calculation of DSE values and royalty payments for carriage of multiple streams of distant digital signals. If, for example, a cable operator chose to import two streams from a particular digital multicast television signal, one of which contained network programming and the other of which did not, that operator should be considered as importing 1.25 DSEs. We seek comment on Copyright Owners' proposals.

Retransmission of Datacast Streams. DTV technology allows television stations to use part of their digital bandwidth for new ancillary programming and data services. These services can be provided simultaneously with high definition or standard definition DTV programs, and can deliver virtually any type of data, audio or video, including text, graphics, software, web pages, video–on–demand, and niche programming. *See 12th Annual Video Competition Report*, 21 FCC Rcd. 2503 at ¶105. Some of the content produced and distributed by the television station may be related to the program being broadcast (*i.e.*, ''program–related material''). For example, a television station may transmit interactive sports statistics along with the local major league baseball game being digitally broadcast.

Copyright Owners did not directly discuss the retransmission of digital program–related material under Section 111 in their Petition for Rulemaking. However, they did suggest that if one digital broadcast stream contained only material that was part of the copyrighted programming on the other digital broadcast stream, the cable operator would report only a single DSE (or .25 DSE if the stream qualified as a ''network station'' as defined in the Copyright Act). Copyright Owners cite to *WGN v. United Video*, 693 F.2d 622 (7th Cir. 1982) in support of their proposal. In WGN, the 7th Circuit held that additional material broadcast with a television program that ''is intended to be viewed with and as an integral component of that program'' is covered by the copyright on the television program.

We seek comment on Copyright Owners' recommendation. We also ask whether the 1982 *WGN* case, decided in an analog context, is still good precedent for our purposes here.[12] In other words, have time and technology eroded the precedential value of the 7th Circuit's decision?

We note that satellite carriers and copyright owners have agreed that no separate copyright royalty payment would be due for any program–related material contained on the digital broadcast stream within the meaning of *WGN*. *See Rate Adjustment for the Satellite Carrier Compulsory License*, 70 FR 39178, 39179 (July 7, 2005). Should we consider this agreement as authoritative guidance in the Section 111 context?

Retransmission of Digital Audio Broadcast Signals. Like television station licensees, terrestrial radio station licensees are also converting to digital broadcasting. Using in band on channel (''IBOC'') technology, radio stations have initiated a new service known as digital audio broadcasting (''DAB''). DAB provides for enhanced sound fidelity and improved reception while giving radio stations the capability to multicast and offer new data services to the public (such as station, song and artist identification, stock and news information, as well as local traffic and weather bulletins). This technology allows broadcasters to use their current radio spectrum to transmit AM and FM analog signals simultaneously with new higher quality digital signals. IBOC technology makes use of the existing AM and FM bands (In Band) by adding digital carriers to a radio station's analog signal, allowing broadcasters to transmit digitally on their existing channel assignments (On Channel). There is, however, no government mandated transition for radio station licensees as there is for television station licensees. *See generally, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* 19 FCC Rcd 7505 (2004).

Nevertheless, we seek comment on what changes in our rules and the SOAs are necessary to accommodate the secondary transmission of digital audio signals by cable systems. How should cable systems report the retransmission of digital audio multicast streams? Will cable subscribers need specialized equipment or set top boxes to receive these digital radio signals? If so, how would this affect a cable operator's gross receipts calculations?

Marketing of Digital Broadcast Signals and the Cable Statutory License

The Copyright Office's regulations require reporting of the gross receipts, as defined in Section 201.17(b), for any tier of service that must be purchased in order to access the tier which contains the broadcast signals. *Compulsory License for Cable Systems: Reporting of Gross Receipts*, 53 FR 2493, 2495 (Jan. 28, 1988); *see also* 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi.

Copyright Owners state that cable operators often carry digital broadcast signals on a digital service tier, but for subscribers to access such signals, they must purchase other tiers of service. They note, for example, that Time Warner's Lincoln, Nebraska cable system offers several digital broadcast signals in a package as a ''free'' service. However, in order to receive this ''free'' package, a subscriber must not only rent an HDTV set top box for $7.65 per month, the subscriber must also purchase the system's ''digital tier,'' which contains many non–broadcast digital programming services, for an additional $6.95 per month.

Accordingly, Copyright Owners request that the Copyright Office clarify that a cable operator must include in its gross receipts any revenues from the tiers of service consumers must

(2001). In any event, cable systems have voluntarily agreed to carry multicast digital programming streams from broadcast stations across the country. *See Carriage of Digital Television Broadcast Signals*, 20 FCC Rcd 4516 at ¶ 38 (2005).

[12] With regard to the mandatory carriage of digital program-related material, the FCC decided to use the same factors enumerated in *WGN*, that are used in the analog context, to determine what material is considered program-related for must carry purposes, at least for the time being. *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd at 2624 (2001); *but see id.* at 2651 (FCC seeking further comment ''on the proper scope of program-related in the digital context.'')

purchase in order to receive HDTV or other digital broadcast signals–notwithstanding that the operator may market its offering of such digital signals as ''free.'' Copyright Owners also recommend that the Copyright Office include in Space E of the cable SOAs a specific reference to ''Digital and HDTV Tiers,'' and explain that such reference includes all service tiers that a consumer must purchase in order to receive digital broadcast signals. We seek comment on these proposals. We also ask commenters to submit other examples of cable industry marketing practices that require subscribers to purchase tiers, services, or gateways, in order to access digital broadcast signals.

Digital Equipment and Reception Issues Under Section 111

Digital Set Top Boxes. Any fees charged for converters necessary to receive broadcast signals must be included in the cable system's gross receipts used to calculate its Section 111 royalty payment. 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi. As the Copyright Office stated nearly thirty years ago: ''In either case, the subscriber must have a converter to receive, in usable form, the signals of all of the television stations that constitute the cable system's 'basic service of providing secondary transmissions of primary broadcast transmitters.' Subscriber fees associated with converters, therefore, are clearly amounts paid for the system's secondary transmission service and are included in that system's 'gross receipts.''' *Compulsory License for Cable Systems*, 43 FR 27827–27828 (June 27, 1978).

Currently, cable subscribers are generally unable to receive digital (including broadcast) signals offered by their cable operator unless they obtain a special converter, *i.e.* digital set top box, regardless of whether those signals are available as part of the lowest–priced basic service. Copyright Owners assert that some cable operators may not be including set top box fees in their calculation of gross receipts. They note, for example, that Time Warner's Lincoln, Nebraska system lists its ''HD Converter'' fee (as well as its ''basic converter'' fee) in Block 2 of Space F of its 2004–1 SOA (labeled as ''Services Other Than Secondary Transmission Rates'') and not in Block 1 of Space E (labeled as ''Secondary Transmission Service: Subscribers and Rates''). Copyright Owners argue that only fees identified in Space E are included in the cable operator's calculation of gross receipts (and thus in the calculation of the cable operator's Section 111 royalty). Copyright Owners assert that Time Warner's Nebraska cable system (if it were carrying digital broadcast signals) may have been incorrectly reporting its revenues from the carriage of retransmitted broadcast signals.

Copyright Owners are not suggesting that all cable operators are failing to include digital converter fees in their gross receipts. They note, for example, the 2004–1 SOA for Comcast's Montgomery County, Maryland cable system does appear to include digital converter fees in its calculation of gross receipts. According to Copyright Owners, the fact that some cable systems are including such converter fees in their gross receipts while others are apparently not doing so underscores the need for the Copyright Office to clarify this issue to ensure consistency in the application of the relevant rules.

Copyright Owners, therefore, request the Copyright Office to clarify that, in accordance with Section 201.17(b), a cable operator must include in its gross receipts any fees charged subscribers for digital set top boxes used to receive HDTV or other digital broadcast signals, notwithstanding that the operator may market its offering of such signals as ''free.'' Copyright Owners also recommend that the Copyright Office include in Space E of the cable statement of account form specific reference to ''Digital and HDTV Converters'' and explain that this line item refers to converters used to receive HDTV or other digital broadcast signals. We seek comment on these proposed changes.

Cable Cards. As stated earlier, under Section 201.17(b) of the Copyright Office's rules, gross receipts for the retransmission of broadcast signals include the full amount of service fees for any and all services or tiers of service which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. (Emphasis added)

Section 624A of the Communications Act, 47 U.S.C. 544a, governs the compatibility between cable systems and navigation devices (*e.g.*, cable set–top boxes, digital video recorders, and television receivers with navigation capabilities) manufactured by consumer electronics manufacturers not affiliated with cable operators. In connection with the digital television transition, the cable industry and the consumer electronics industry have engaged in ongoing inter–industry discussions seeking to establish a cable ''plug and play'' standard. With the standard in place, consumers are able to directly attach their DTV receivers to cable systems and receive cable television service without the need for a digital set top box. To receive cable service, consumers would only need to use a point–of–deployment module (''POD''), now marketed as ''CableCARD,'' that would fit into a slot built into the television set. The POD acts as a key to unlock encrypted programming. In October 2003, the FCC adopted initial ''plug and play'' and POD requirements that were generally proposed by the cable and consumer electronics industries. *Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885 (2003). The current rules, however, apply only to unidirectional programming (i.e. programming coming from the cable headend) and does not apply to bi–directional programming, such as Video On Demand and impulse pay–per–view. The industries are currently working on a bi–directional plug and play agreement. In the meantime, cable subscribers will still need a digital set top box to access these types of advanced services.

We seek comment on whether cable subscribers have been required to purchase CableCards in order to access digital broadcast television signals. If so, we ask whether the Copyright Office's definition of gross receipts should be amended to include subscriber revenue generated through the lease of CableCards. How are cable operators currently treating the lease of CableCards on their SOAs? What space and block on the SOAs should be changed, or possibly added, to list CableCard revenue?

Second Television Set Fees. Cable operator fees for service to second television sets are included in a cable system's gross receipts for the purposes of Section 111. 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi; *see also Compulsory License for Cable Systems*, 43 FR 958, 959 (Jan. 5, 1978) (''The additional set fee is, we believe, clearly a payment for basic secondary transmission service . . .'').

Copyright Owners state that some cable systems charge additional fees for access to digital broadcast signals to a second television set in the household. They note, for example, that Susquehanna's York, Pennsylvania, cable system charges its customers $6.95 per month for ''Additional HDTV Terminals,'' even though it does not charge customers for service to additional television sets receiving only an analog service. *See http://www.suscom.com/home/sites/pricing.php?city=york).* Copyright Owners contend, however, that it is

unclear whether this system, and others like it, are including fees for service to additional sets that receive HDTV and other digital broadcast signals within their calculation of gross receipts.

Copyright Owners thus ask the Copyright Office to clarify that, in accordance with Section 201.17(b) of the rules, fees for service to additional digital television sets or ''HDTV Terminals'' must be included in a cable system's gross receipts. Copyright Owners also recommend that the Copyright Office include in Space E of the cable SOA specific reference to ''Digital and HDTV Additional Set Fees'' and explain that such line item refers to fees charged for service to additional television sets receiving HDTV or other digital broadcast signals. We seek comment on the changes proposed by the Copyright Owners. Moreover, some cable operators offer their subscribers in–home digital networks where one digital set top box provides digital signals to all sets in the household. We seek comment on whether the fees associated with such a service, if any, should be included in the operator's gross receipts calculation.

Conclusion

We hereby seek comment from the public on the issues identified herein associated with the retransmission of digital broadcast signals by cable systems under Section 111 of the Copyright Act. If there are any additional issues concerning the treatment of digital television retransmissions not discussed above, we encourage interested parties to bring those matters to our attention.

Dated: September 14, 2006.

Marybeth Peters,

Register, U.S. Copyright Office.

[FR Doc. 06–7927 Filed 9–19–06; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0483; FRL–8078–2]

Chlorpropham, Linuron, Pebulate, Asulam, and Thiophanate-methyl; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the herbicides linuron and pebulate and the fungicide thiophanate-methyl. Also, EPA is proposing to modify certain tolerances for the herbicides chlorpropham, linuron, asulam and the fungicide thiophanate-methyl. In addition, EPA is proposing to establish new tolerances for the herbicides chlorpropham, linuron, asulam, and the fungicide thiophanate-methyl. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments must be received on or before November 20, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0483, by one of the following methods:

- *Federal eRulemaking Portal:http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.); 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0483. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://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 information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation for this docket facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address:*smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to