PART 260—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES’ DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS

§ 260.1 General.
(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services.

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

§ 260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee’s monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee’s monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee’s monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee’s monthly gross revenues resulting from residential services in the United States.

(c) Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on August 20, 2003. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable 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.
§ 260.3 Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(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), 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.

(e) Until such time as a new designation is made, SoundExchange, which 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,