decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1351/Airspace Docket No. 22–ASW–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by removing the Class E airspace extending upward from 700 feet above the surface at Alta Vista Ranch Airport, Marfa, TX.

This action is the result of the closure of the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Marfa, Alta Vista Ranch Airport, TX [Remove]

Issued in Fort Worth, Texas, on October 31, 2022.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–23993 Filed 11–4–22; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. 21–CRB–0001–PR (2023–2027)]

Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment and objection proposed regulations that set rates and terms applicable during the period from January 1, 2023, through December 31, 2027, for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

DATES: Comments and objections, if any, are due no later than December 7, 2022.

ADDRESSES: You may send comments, identified by docket number 21–CRB–0001–PR (2023–2027), online through eCRB at *https://app.crb.gov.*

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your

registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at *https://app.crb.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0001–PR (2023–2027).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the ''mechanical'' compulsory license) to any person who wants to make and distribute phonorecords of that work, under circumstances set forth in the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act authorizes the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2021, by publishing notice of the commencement and a request that interested parties submit petitions to participate. *See* 86 FR 25 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from Amazon.com Services LLC, Apple Inc., Copyright Owners (joint petitioners Nashville Songwriters Association International (NSAI) and National Music Publishers Association (NMPA)), Google LLC, George Johnson, Joint Record Company Participants (filed by Recording Industry Association of America, Inc. for joint petitioners Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp.), Pandora Media, LLC, David Powell, SoundCloud Operations Inc.,[1] Spotify USA Inc., and Brian Zisk.

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021.[2] The Judges extended the deadline to October 13, 2021. *Order Granting Joint Motion to Modify the Case Scheduling Order* (eCRB No. 25555) (Aug. 3, 2021). The Judges received Written Direct Statements from participants Amazon.com Services LLC, Apple Inc., Copyright Owners (Nashville Songwriters Association International (NSAI) and National Music Publishers Association (NMPA)), Google LLC, George Johnson, Pandora Media, LLC, and Spotify USA Inc.

On August 31, 2022, the Judges received a motion stating that several participants, (Settling Parties),[3] had reached a partial settlement regarding the rates and terms under Section 115 of the Copyright Act, namely, for Licensed Activity (as defined in 37 CFR part 385, subpart A)[4] presently addressed in subparts C & D of 37 CFR part 385 together with certain regulations of general application (*e.g.,* definitions and late fee provisions) applicable to the subpart C & D Configurations presently addressed in 37 CFR part 385, subpart A, for the 2023–2027 rate period[5] and seeking approval of that partial settlement. *See Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart C and D Configurations,* Docket No. 21–CRB–0001–PR (2023–2027) at 1 (Motion). The movants state that ''the settlement [ ] represents the consensus of both licensees and licensors representing the vast majority of the market for rights under Section 115 for Subpart C & D Configurations.''[6] Motion at 3.

On September 26, 2022, the Judges issued ''Order 63 to File Certification or Provide Settlement Agreements'' (Order 63), which ordered the Settling Parties to certify that the Motion and the Proposed Regulations annexed to the Motion represent the full agreement of the Settling Parties, *i.e.,* that there are no other related agreements and no other clauses. Order 63 further ordered that if such other agreements or clauses exist, the Settling Parties shall file them.

On September 26, 2022, the Settling Parties filed a ''Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63'' (Joint Response). Portions of the Joint Response, which were submitted as Restricted, are responsive to Order 63. On October 6, 2022, the Settling Parties filed a ''Joint Submission of Settling Participants Regarding Settlement Agreement'' (Joint Submission) which removed the Restricted designation to the ''Settlement Agreement'' attached as Exhibit A to the Joint Submission. However, the Joint Response and the Joint Submission do not completely and adequately respond to Order 63.

On October 3, 2022, Google and NMPA filed ''Google and NMPA's Joint Notice of Lodging'' (Joint Notice of Lodging), which indicated that those two parties found Order 63 unclear regarding what is meant by ''related agreements.'' Google and NMPA offered that they broadly construed Order 63's reference to ''related agreements'' to include certain letter agreements executed between Google, on the one hand, and certain music publishers and the NMPA, on the other hand, on or around the execution date of the settlement agreement. Google and NMPA indicated they will ''lodge'' such letter agreements concurrently with their Joint Notice of Lodging.[7] Google and NMPA also indicated that they do not believe that the letter agreements are substantively related to the parties' settlement agreement, and that the letter agreements simply concern Google's allocation practices to avoid double

[1] SoundCloud Operations Inc. withdrew from the proceeding on May 21, 2021.

[2] Several parties negotiated a proposed partial settlement in May 2021. The Judges accordingly published for comment the parties' proposed changes (to subparts A and B of 37 CFR part 385). *See* 87 FR 33093 (June 1, 2022).

[3] The participants who filed the motion are the National Music Publishers' Association (''NMPA'') and Nashville Songwriters Association International (''NSAI,'' and collectively with NMPA, the ''Copyright Owners''), on the one hand, and Amazon.com Services LLC, Apple Inc., Google LLC, Pandora Media, LLC, and Spotify USA Inc. Motion at 1.

[4] ''*Licensed Activity* . . . as the term is used in subparts C and D of this part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services.'' 37 CFR 385.2.

[5] The motion refers to the rate period as ''the full time period addressed by the Proceeding''. Motion at 1.

[6] The movants indicate that participant George Johnson does not agree to the settlement and that participants David Powell and Brian Zisk should be dismissed because they did not file a Written Direct Statement. Motion at 3 and n. 1. Mr. Johnson filed an opposition to the motion (eCRB. No. 27239) on September 6 which the Judges consider relevant to this proposed rule.

[7] On October 7, 2022, Google and NMPA submitted ''Google and NMPA's Joint Notice of Public Lodging'' which included public versions of letter agreements.

payments arising from certain direct agreements.

On October 17, 2022, the Judges issued ''Order 64 to File Settlement Agreements and Provide Certification'' (Order 64), which clarified the scope of Order 63 and ordered the Settling Parties to:

(1) *file* (not ''lodge'') any supplemental written agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to, the Settlement referenced in the Motion.

(2) file a detailed description of any supplemental oral agreements between Service Participants, on the one hand, and Copyright Owners and/or their affiliates, including copyright owners that they represented in this proceeding, on the other hand, that represent consideration for, or are contractually related to the Settlement referenced in the Motion, through a certification or certifications from individuals with direct knowledge of any such supplemental oral agreements.

(3) file a certification or certifications from a person or persons with first-hand knowledge stating that there are no other agreements, written or oral, beyond the Settlement, the Settlement Agreement and the filed supplemental written or oral agreements responsive to this order.

(4) explain in a supplemental brief why the remaining restricted portions of the Joint Response, apart from Exhibit A, from which the Restricted designation has been removed, would, if disclosed, interfere with the ability of the Producer to obtain like information in the future.

On October 26, 2022, the Settling Parties filed a ''Joint Response to Order 64'' (Joint Response 2).

In response to item #1 above, Joint Response 2 noted that the October 6, 2022, Joint Submission removed the Restricted designation to the ''Settlement Agreement'' and attached it within Exhibit A to Joint Response 2. In Joint Response 2, Google and NMPA also filed the aforementioned letter agreements as Exhibit B to Joint Submission 2.[8] Joint Response 2 also included the Settling Parties' representation that other than the Settlement Agreement itself, there are no other agreements responsive to Order 64.

In response to item #2 above, Joint Response 2 stated that there are no supplemental oral agreements responsive to Order 64.

In response to item #3 above, Joint Response 2 included Exhibits C–1 through C–7, certifications from a representative of each Party with first-hand knowledge of the Settlement Agreement and negotiations, which collectively attest that there are no other agreements, written or oral, responsive to Order 64 beyond the agreements provided as part of Joint Response 2.

In response to item #4 above, Joint Response 2 noted that the Settling Parties do not believe that there is any reason why any restricted portions of the Joint Response need to remain restricted. Therefore, the Settling Parties filed, concurrently with Joint Response 2, a revised version of the Joint Response that removes all redactions, entitled ''[Revised to Remove Redactions] Joint Response to George Johnson's Motion to Compel Production of Settlement and CRB Order 63.'' (Revised Joint Response).

The Settling Parties offered that through Joint Response 2, and the related submissions referenced therein, the Judges have all materials necessary to publish the proposed rates and terms for public comment. The Settling Parties noted the necessary public comment and objection period, as well as potential consequences to the industry if rates and terms are not effective in time to be operationalized for the beginning of 2023, and therefore request that the Judges publish the proposed rates and terms for public comment as soon as possible.[9] Proposed regulations implementing the settlement are attached to Joint Response 2.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section states that the Judges shall (1) provide an opportunity to comment on the agreement to non-participants who would be bound by the terms, rates, or other determination set by the agreement; and (2) provide an opportunity to comment and to object to participants in the proceeding who would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

Having reviewed Joint Response 2, its attachments, and the related submissions referenced therein, the Judges find that Joint Response 2, Exhibit A, sub-exhibit A (referenced therein as the ''Settlement Agreement'' and ''Proposed Regulations'') includes ''the agreement'' for purposes of Section 801(b)(7)(A). The portions of Joint Response 2 Exhibit A, sub-exhibit A referred to as ''Settlement Agreement'' and ''Proposed Regulations'' may be found on pages 9–17 of 89 and 19–34 of 89 of Joint Response 2, *(eCRB No. 27290).* The regulatory amendments that adoption of the proposed settlement would entail are reflected in the Proposed Regulations portion of this document.[10]

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

The Judges solicit comments and objections from participants on whether they should adopt the proposed regulations as statutory rates and terms relating to the making and distribution of phonorecords of nondramatic musical works.

Comments and objections regarding the rates and terms must be submitted no later than December 7, 2022.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

■ 2. Revise subpart A to read as follows:

[8] Joint Response 2 reiterated Google and NMPA's view that the letter agreements are not substantively related to the parties' settlement agreement, and that the letter agreements simply concern Google's allocation practices to avoid double payments arising from certain direct agreements

[9] The Judges are aware of the participants' and the public's interest in timely implementation of rates and terms, and note that the submission of partial agreements and related materials as restricted has been a source of unfortunate delay in consideration of the proposed settlement of statutory royalty rates and terms for subpart C and D configurations.

[10] The docket for this proceeding, including documents referenced in this document, may be accessed via the Electronic filing system eCRB at *https://app.crb.gov* and perform a case search for docket 21–CRB–0001–PR (2023–2027).

Subpart A—Regulations of General Application

Subpart A—Regulations of General Application

§ 385.1 General.

(a) *Scope.* This part establishes rates and terms of royalty payments for the use of nondramatic musical works in making and distributing of physical and digital phonorecords in accordance with the provisions of 17 U.S.C. 115. This subpart contains regulations of general application to the making and distributing of phonorecords subject to the section 115 license.

(b) *Legal compliance.* Licensees relying on the compulsory license detailed in 17 U.S.C. 115 shall comply with the requirements of that section, the rates and terms of this part, and any other applicable regulations. This part describes rates and terms for the compulsory license only.

(c) *Interpretation.* This part is intended only to set rates and terms for situations in which the exclusive rights of a Copyright Owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this part nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which a user must obtain a compulsory license pursuant to 17 U.S.C. 115.

(d) *Relationship to voluntary agreements.* The rates and terms of any license agreements entered into by Copyright Owners and Licensees relating to use of musical works within the scope of those license agreements shall apply in lieu of the rates and terms of this part.

§ 385.2 Definitions.

Unless otherwise specified, capitalized terms in this part shall have the same meaning given to them in 17 U.S.C. 115(e). For the purposes of this part, the following definitions apply:

Accounting Period means the monthly period specified in 17 U.S.C. 115(c)(2)(I) and in 17 U.S.C. 115(d)(4)(A)(i), and any related regulations, as applicable.

Active Subscriber means an End User of a Bundled Subscription Offering who has made at least one Play during the Accounting Period.

Affiliate means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a Sound Recording Company shall not include a Copyright Owner to the extent it is engaging in business as to musical works.

Artificial Accounts are accounts that are disabled or terminated for having engaged in User Manipulation or other fraudulent activity and for which any subscription revenues are refunded or otherwise not received by the Service Provider.

Bundle means a combination of a Subscription Offering providing Eligible Interactive Streams and/or Eligible Limited Downloads and one or more other products or services having more than token value, purchased by End Users in a single transaction (*e.g.,* where End Users make a single payment without separate pricing for the Subscription Offering component).

Bundled Subscription Offering means a Subscription Offering providing Eligible Interactive Streams and/or Eligible Limited Downloads included within a Bundle.

Copyright Owner(s) are nondramatic musical works copyright owners who are entitled to royalty payments made under this part pursuant to the compulsory license under 17 U.S.C. 115.

Digital Phonorecord Delivery has the same meaning as in 17 U.S.C. 115(e)(10).

Eligible Interactive Stream means a Stream that is an Interactive Stream as defined in 17 U.S.C. 115(e)(13).

Eligible Limited Download means a Limited Download as defined in 17 U.S.C. 115(e)(16) that is only accessible for listening for—

(1) An amount of time not to exceed one month from the time of the transmission (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use for another time period not to exceed one month), or in the case of a subscription plan, a period of time following the end of the applicable subscription no longer than a subscription renewal period or three months, whichever is shorter; or

(2) A number of times not to exceed 12 (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use of another series of 12 or fewer plays), or in the case of a subscription transmission, 12 times after the end of the applicable subscription.

End User means each unique person that:

(1) Pays a subscription fee for an Offering during the relevant Accounting Period; or

(2) Makes at least one Play during the relevant Accounting Period.

Family Plan means a discounted Subscription Offering to be shared by up to six members of the same family or household for a single subscription price.

Free Trial Offering means a subscription to a Service Provider's transmissions of sound recordings embodying musical works when—

(1) Neither the Service Provider, the Sound Recording Company, the Copyright Owner, nor any person or entity acting on behalf of or in lieu of any of them receives any monetary consideration for the Offering;

(2) The usage does not exceed 45 days per subscriber per one-year period, which days may be nonconsecutive;

(3) In connection with the Offering, the Service Provider complies with the recordkeeping requirements in § 385.4 or superseding Copyright Office recordkeeping requirements;

(4) The Free Trial Offering is made available to the End User free of any charge; and

(5) The Service Provider offers the End User periodically during the trial an opportunity to subscribe to, and/or auto-renews the End User into, a non-Free Trial Offering of the Service Provider.

GAAP means U.S. Generally Accepted Accounting Principles in effect at the relevant time, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards in lieu of Generally Accepted Accounting Principles, then that entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this subpart.

Licensee means any entity availing itself of the compulsory license under 17 U.S.C. 115 to use copyrighted musical works in the making or distributing of physical or digital phonorecords.

Licensed Activity as the term is used in subparts C and D of this part, means Covered Activity, under voluntary or statutory license, in the form of Eligible Interactive Streams, Eligible Limited Downloads, and Restricted Downloads.

Locker Service means an Offering providing digital access to sound recordings of musical works in the form of Eligible Interactive Streams, Permanent Downloads, Restricted Downloads or Ringtones where the Service Provider has reasonably

determined that the End User has purchased or is otherwise in possession of the subject phonorecords of the applicable sound recording prior to the End User's first request to use the sound recording via the Locker Service. The term Locker Service does not mean any part of a Service Provider's products otherwise meeting this definition, but as to which the Service Provider has not obtained a section 115 license.

Mixed Service Bundle means an Offering providing Licensed Activity consisting of Eligible Interactive Streams or Eligible Limited Downloads that meets all of the following criteria:

(1) The Offering is made available to End Users only in combination (*i.e.,* the Offering is not available on a standalone basis) with one or more products or services (including services subject to other subparts) of more than token value as part of one transaction for which End Users make a payment without receiving pricing for the Offering separate from the product(s) or service(s) with which it is made available.

(2) The Offering is made available by a Service Provider that also offers End Users a separate, standalone Subscription Offering.

(3) The Offering offers End Users less functionality relative to that separate, standalone Subscription Offering. Such lesser functionality may include, but is not limited to, limitations on the ability of End Users to choose to listen to specific sound recordings on request or a limited catalog of sound recordings.

(4) Where an Offering could qualify or be considered as either a Bundled Subscription Offering or a Mixed Service Bundle, such Offering shall be deemed a Mixed Service Bundle for the purpose of calculating and paying royalties under subpart C of this part.

Music Bundle means two or more of physical phonorecords, Permanent Downloads or Ringtones delivered as part of one transaction (*e.g.,* download plus ringtone, CD plus downloads). In the case of Music Bundles containing one or more physical phonorecords, the Service Provider must sell the physical phonorecord component of the Music Bundle under a single catalog number, and the musical works embodied in the Digital Phonorecord Delivery configurations in the Music Bundle must be the same as, or a subset of, the musical works embodied in the physical phonorecords; provided that when the Music Bundle contains a set of Digital Phonorecord Deliveries sold by the same Sound Recording Company under substantially the same title as the physical phonorecord (*e.g.,* a corresponding digital album), the Service Provider may include in the same bundle up to 5 sound recordings of musical works that are included in the stand-alone version of the set of digital phonorecord deliveries but not included on the physical phonorecord. In addition, the Service Provider must permanently part with possession of the physical phonorecord or phonorecords it sells as part of the Music Bundle. In the case of Music Bundles composed solely of digital phonorecord deliveries, the number of digital phonorecord deliveries in either configuration cannot exceed 20, and the musical works embodied in each configuration in the Music Bundle must be the same as, or a subset of, the musical works embodied in the configuration containing the most musical works.

Offering means a Service Provider's engagement in Licensed Activity covered by subparts C and D of this part.

Paid Locker Service means a Locker Service for which the End User pays a fee to the Service Provider.

Performance Royalty means the license fee payable for the right to perform publicly musical works in any of the forms covered by subparts C and D this part.

Permanent Download has the same meaning as in 17 U.S.C. 115(e)(24).

Play means an Eligible Interactive Stream, or a play of an Eligible Limited Download, lasting 30 seconds or more and, if a track lasts in its entirety under 30 seconds, an Eligible Interactive Stream or a play of an Eligible Limited Download of the entire duration of the track. A Play excludes an Eligible Interactive Stream or a play of an Eligible Limited Download caused by User Manipulation.

Promotional Offering means a digital transmission of a sound recording, in the form of an Eligible Interactive Stream or an Eligible Limited Download, embodying a musical work, the primary purpose of which is to promote the sale or other paid use of that sound recording or to promote the artist performing on that sound recording and not to promote or suggest promotion or endorsement of any other good or service and

(1) A Sound Recording Company is lawfully distributing the sound recording through established retail channels or, if the sound recording is not yet released, the Sound Recording Company has a good faith intention to lawfully distribute the sound recording or a different version of the sound recording embodying the same musical work;

(2) The Service Provider is in compliance with the recordkeeping requirements of § 385.4 or superseding Copyright Office recordkeeping requirements;

(3) For Eligible Interactive Streams of segments of sound recordings not exceeding 90 seconds, the Sound Recording Company delivers or authorizes delivery of the segments for promotional purposes and neither the Service Provider nor the Sound Recording Company creates or uses a segment of a sound recording in violation of 17 U.S.C. 106(2) or 115(a)(2);

(4) The Promotional Offering is made available to an End User free of any charge; and

(5) The Service Provider provides to the End User at the same time as the Promotional Offering Stream an opportunity to purchase the sound recording or the Service Provider periodically offers End Users the opportunity to subscribe to a paid Offering of the Service Provider.

Purchased Content Locker Service means a Locker Service made available to End User purchasers of Permanent Downloads, Ringtones, or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the Permanent Downloads, Ringtones, or physical phonorecords acquired from a qualifying seller. With a Purchased Content Locker Service, an End User may receive one or more additional phonorecords of the purchased sound recordings of musical works in the form of Permanent Downloads or Ringtones at the time of purchase, or subsequently have digital access to the purchased sound recordings of musical works in the form of Eligible Interactive Streams, additional Permanent Downloads, Restricted Downloads, or Ringtones.

(1) A qualifying seller for purposes of this definition is the entity operating the Service Provider, including Affiliates, predecessors, or successors in interest, or—

(i) In the case of Permanent Downloads or Ringtones, a seller having a legitimate connection to the locker service provider pursuant to one or more written agreements (including that the Purchased Content Locker Service and Permanent Downloads or Ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords,

(A) The seller of the physical phonorecord has an agreement with the Purchased Content Locker Service provider establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical

phonorecord and offer the integrated locker service; or

(B) The Service Provider has an agreement with the entity offering the Purchased Content Locker Service establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical phonorecord and offer the integrated locker service.

(2) [Reserved]

Relevant Page means an electronic display (for example, a web page or screen) from which a Service Provider's Offering consisting of Eligible Interactive Streams or Eligible Limited Downloads is directly available to End Users, but only when the Offering and content directly relating to the Offering (*e.g.,* an image of the artist, information about the artist or album, reviews, credits, and music player controls) comprises 75% or more of the space on that display, excluding any space occupied by advertising. An Offering is directly available to End Users from a page if End Users can receive sound recordings of musical works (in most cases this will be the page on which the Eligible Limited Download or Eligible Interactive Stream takes place).

Restricted Download means a Digital Phonorecord Delivery in a form that cannot be retained and replayed on a permanent basis. The term Restricted Download includes an Eligible Limited Download.

Ringtone means a phonorecord of a part of a musical work distributed as a Digital Phonorecord Delivery in a format to be made resident on a telecommunications device for use to announce the reception of an incoming telephone call or other communication or message or to alert the receiver to the fact that there is a communication or message.

Service Provider means that entity governed by subparts C and D of this part, which might or might not be the Licensee, that with respect to the section 115 license

(1) Contracts with or has a direct relationship with End Users or otherwise controls the content made available to End Users;

(2) Is able to report fully on Service Provider Revenue from the provision of musical works embodied in phonorecords to the public, and to the extent applicable, verify Service Provider Revenue through an audit; and

(3) Is able to report fully on its usage of musical works, or procure such reporting and, to the extent applicable, verify usage through an audit.

Service Provider Revenue. (1) Subject to paragraphs (2) through (5) of this definition and subject to GAAP, Service Provider Revenue shall mean, for each Offering subject to subpart C of this part:

(i) All revenue from End Users recognized by a Service Provider for the provision of the Offering;

(ii) All revenue recognized by a Service Provider by way of sponsorship and commissions as a result of the inclusion of third-party ''in-stream'' or ''in-download'' advertising as part of the Offering, *i.e.,* advertising placed immediately at the start or end of, or during the actual delivery of, a musical work, by way of Eligible Interactive Streams or Eligible Limited Downloads; and

(iii) All revenue recognized by the Service Provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a Relevant Page of the Service Provider or on any page that directly follows a Relevant Page leading up to and including the Eligible Limited Download or Eligible Interactive Stream of a musical work; provided that, in case more than one Offering is available to End Users from a Relevant Page, any advertising revenue shall be allocated between or among the Service Providers on the basis of the relative amounts of the page they occupy.

(2) Service Provider Revenue shall:

(i) Include revenue recognized by the Service Provider, or by any associate, Affiliate, agent, or representative of the Service Provider in lieu of its being recognized by the Service Provider; and

(ii) Include the value of any barter or other nonmonetary consideration; and

(iii) Except as expressly detailed in this part, not be subject to any other deduction or set-off other than refunds to End Users for Offerings that the End Users were unable to use because of technical faults in the Offering or other bona fide refunds or credits issued to End Users in the ordinary course of business.

(3) Service Provider Revenue shall exclude revenue derived by the Service Provider solely in connection with activities other than Offering(s), whereas advertising or sponsorship revenue derived in connection with any Offering(s) shall be treated as provided in paragraphs (1), (2), and (4) of this definition.

(4) For purposes of paragraph (1) of this definition, advertising or sponsorship revenue shall be reduced by the actual cost of obtaining that revenue, not to exceed 15%.

(5) In instances in which a Service Provider provides a Bundled Subscription Offering to End Users, the revenue from End Users deemed to be recognized by the Service Provider for the Offering for the purpose of paragraph (1) of this definition of Service Provider Revenue shall be as follows:

(i) For Bundled Subscription Offerings where both each component of the Bundle is a product or service of the Service Provider (including Affiliates) and the Service Provider (including Affiliates) makes the Bundle available to End Users directly, then the revenue from End Users deemed to be recognized by the Service Provider for the purpose of paragraph (1) of this definition shall be the aggregate of the retail price paid for the Bundle (*i.e.,* all components for one retail price) multiplied by a fraction where the numerator is the standalone retail price of the Subscription Offering component in the Bundle and the denominator is the sum of the standalone retail prices of each of the components in the Bundle (*e.g.* if a Service Provider sells the Subscription Offering component on a standalone basis for $10/month and a separate product and/or service on a standalone basis for $5/month, then the fraction shall be $10 divided by $15, *i.e.* ⅔, resulting in Service Provider Revenue of $8,000 if the aggregate of the retail price paid for the Bundle is $12,000).

(ii) For Bundled Subscription Offerings where either one or more components of the Bundle are not products or services of the Service Provider (including Affiliates) or the Service Provider (including Affiliates) does not make the Bundle available to End Users directly, then the revenue from End Users deemed to be recognized by the Service Provider for the purpose of paragraph (1) of this definition shall be the revenue recognized by the Service Provider from the Bundle multiplied by a fraction where the numerator is the standalone retail price of the Subscription Offering component in the Bundle and the denominator is the sum of the standalone retail prices of each of the components of the Bundle. Notwithstanding the preceding sentence, where the Service Provider does not recognize revenue for one or more components of the Bundle, then the standalone price(s) of the component(s) for which revenue is not recognized shall not be included in the calculation of the denominator of the fraction described in this sub-paragraph (*e.g.,* where a Bundle of three services, each with a standalone price of $20/month, sells for $50/month, and the Service Provider recognizes $30,000 of revenue from the provision of only two of those services, one of which is a Subscription Offering, then the fraction

shall be $20 divided by $40, *i.e.* ½, resulting in Service Provider Revenue of $15,000).

(iii) For the calculations in paragraphs (5)(i) and (ii) of this definition, in the event that there is no standalone published price for a component of the Bundle, then the Service Provider shall use the average standalone published price for End Users for the most closely comparable product or service in the U.S. or, if more than one comparable exists, the average of standalone prices for comparables. If no reasonably comparable product or service exists in the U.S., then the Service Provider may use another good faith, reasonable measure of the market value of the component.

Sound Recording Company means a person or entity that:

(1) Is a copyright owner of a sound recording embodying a musical work;

(2) In the case of a sound recording of a musical work fixed before February 15, 1972, has rights to the sound recording, under chapter 14 of title 17, United States Code, that are equivalent to the rights of a copyright owner of a sound recording of a musical work under title 17, United States Code;

(3) Is an exclusive Licensee of the rights to reproduce and distribute a sound recording of a musical work; or

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of a person identified in paragraphs (1) through (3) of this definition.

Standalone Limited Offering means a Subscription Offering providing Eligible Interactive Streams or Eligible Limited Downloads for which—

(1) An End User cannot choose to listen to a particular sound recording (*i.e.,* the Service Provider does not provide Eligible Interactive Streams of individual recordings that are on-demand, and Eligible Limited Downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or

(2) The particular sound recordings available to the End User over a period of time are substantially limited relative to Service Providers in the marketplace providing access to a comprehensive catalog of recordings (*e.g.,* a product limited to a particular genre or permitting Eligible Interactive Streams only from a monthly playlist consisting of a limited set of recordings).

Standalone Non-Portable Subscription Offering—Mixed means a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted.

Standalone Non-Portable Subscription Offering—Streaming Only means a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection.

Standalone Portable Subscription Offering means a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device.

Stream means the digital transmission of a sound recording of a musical work to an End User—

(1) To allow the End User to listen to the sound recording, while maintaining a live network connection to the transmitting service, substantially at the time of transmission, except to the extent that the sound recording remains accessible for future listening from a Streaming Cache Reproduction;

(2) Using technology that is designed such that the sound recording does not remain accessible for future listening, except to the extent that the sound recording remains accessible for future listening from a Streaming Cache Reproduction; and

(3) That is subject to licensing as a public performance of the musical work.

Streaming Cache Reproduction means a reproduction of a sound recording embodying a musical work made on a computer or other receiving device by a Service Provider solely for the purpose of permitting an End User who has previously received a Stream of that sound recording to play the sound recording again from local storage on the computer or other device rather than by means of a transmission; provided that the End User is only able to do so while maintaining a live network connection to the Service Provider, and the reproduction is encrypted or otherwise protected consistent with prevailing industry standards to prevent it from being played in any other manner or on any device other than the computer or other device on which it was originally made.

Student Plan means a discounted Subscription Offering available on a limited basis to students.

Subscription Offering means an Offering for which End Users are required to pay a fee to have access to the Offering for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether the End User makes payment for access to the Offering on a standalone basis or as part of a Bundle.

TCC means the total amount expensed by a Service Provider or any of its Affiliates in accordance with GAAP for rights to make Eligible Interactive Streams or Eligible Limited Downloads of a musical work embodied in a sound recording through the Service Provider for the Accounting Period, which amount shall equal the Applicable Consideration for those rights at the time the Applicable Consideration is properly recognized as an expense under GAAP. As used in this definition, ''Applicable Consideration'' means anything of value given for the identified rights to undertake the Licensed Activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether that consideration is conveyed via a single agreement, multiple agreements and/or agreements that do not themselves authorize the Licensed Activity but nevertheless provide consideration for the identified rights to undertake the Licensed Activity, and including any value given to an Affiliate of a Sound Recording Company for the rights to undertake the Licensed Activity. Value given to a Copyright Owner of musical works that is controlling, controlled by, or under common control with a Sound Recording Company for rights to undertake the Licensed Activity shall not be considered value given to the Sound Recording Company. Notwithstanding the foregoing, Applicable Consideration shall not include in-kind promotional consideration given to a Sound Recording Company (or Affiliate thereof) that is used to promote the sale or paid use of sound recordings embodying musical works or the paid use of music services through which sound recordings embodying musical works are available where the in-kind promotional consideration is given in connection with a use that qualifies for licensing under 17 U.S.C. 115.

User Manipulation means any behavior that artificially distorts the number of Plays, including, but not limited to, the use of manual (*e.g.,* click farms) or automated (*e.g.,* bots) means.

§ 385.3 Late payments.

A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate,

whichever is lower, for any payment owed to a Copyright Owner and remaining unpaid after the due date established in 17 U.S.C. 115(c)(2)(I) or 17 U.S.C. 115(d)(4)(A)(i), as applicable and detailed in part 210 of this title. Late fees shall accrue from the due date until the Copyright Owner receives payment.

§ 385.4 Recordkeeping for promotional or free trial non-royalty-bearing uses.

(a) *Effect of Copyright Office recordkeeping regulations.* Unless and until the Copyright Office promulgates superseding regulations concerning recordkeeping for promotional or free trial non-royalty-bearing uses subject to this part, the recordkeeping provisions in this section shall apply to Service Providers.

(b) *General.* A Service Provider transmitting a sound recording embodying a musical work subject to 17 U.S.C. 115 and subparts C and D of this part and claiming a Promotional Offering or Free Trial Offering zero royalty rate shall keep complete and accurate contemporaneous written records of making or authorizing Eligible Interactive Streams or Eligible Limited Downloads, including the sound recordings and musical works involved, the artists, the release dates of the sound recordings, a brief statement of the promotional activities authorized, the identity of the Offering or Offerings for which the zero-rate is authorized (including the internet address if applicable), and the beginning and end date of each zero rate Offering.

(c) *Retention of records.* A Service Provider claiming zero rates shall maintain the records required by this section for no less time than the Service Provider maintains records of royalty-bearing uses involving the same types of Offerings in the ordinary course of business, but in no event for fewer than five years from the conclusion of the zero rate Offerings to which they pertain.

(d) *Availability of records.* If the Mechanical Licensing Collective requests information concerning zero rate Offerings, the Service Provider shall respond to the request within an agreed, reasonable time.

■ 3. Revise subpart C, consisting of §§ 385.20 and 385.21, to read as follows:

Subpart C—Eligible Interactive Streaming, Eligible Limited Downloads, Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Locker Services, and Other Delivery Configurations

§ 385.20 Scope.

This subpart establishes rates and terms of royalty payments for Eligible Interactive Streams and Eligible Limited Downloads of musical works, and other reproductions or distributions of musical works through Standalone Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Paid Locker Services, and Purchased Content Locker Services provided through subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115, exclusive of Offerings subject to subpart D of this part.

§ 385.21 Royalty rates and calculations.

(a) *Applicable royalty.* Licensees that engage in Licensed Activity covered by this subpart pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section.

(b) *Rate calculation.* Royalty payments for Licensed Activity in this subpart shall be calculated as provided in this paragraph (b). If a Service Provider makes available different Offerings, royalties must be calculated separately with respect to each Offering taking into consideration Service Provider Revenue, TCC, subscribers, Plays, expenses, and Performance Royalties associated with each Offering. A Service Provider shall not be required to subject the same portion of Service Provider Revenue, TCC, subscribers, Plays, expenses, or Performance Royalties to the calculation of royalties for more than one Offering in an Accounting Period.

(1) *Step 1: Calculate the all-in royalty for the Offering.* For each Accounting Period, the all-in royalty for each Offering in this subpart with the exception of Mixed Service Bundles shall be the greater of {a} the applicable percent of Service Provider Revenue, as set forth in Table 1 to this paragraph (b)(1), and {b} the result of the TCC Prong Calculation for the respective type of Offering as set forth in Table 2 to this paragraph (b)(1). For Mixed Service Bundles, the all-in royalty shall be the result of the TCC Prong Calculation as set forth in table 2.

TABLE 1 TO PARAGRAPH (b)(1)

Royalty year	2023	2024	2025	2026	2027
Percent of Service Provider Revenue	15.1	15.2	15.25	15.3	15.35

TABLE 2 TO PARAGRAPH (b)(1)

Type of offering	TCC prong calculation
Standalone Non-Portable Subscription Offering—Streaming Only	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
Standalone Non-Portable Subscription Offering—Mixed	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
Standalone Portable Subscription Offering	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of $1.10 per subscriber for the Accounting Period.
Free nonsubscription/ad-supported services free of any charge to the End User.	26.2% of TCC for the Accounting Period.
Bundled Subscription Offering	24.5% of TCC for the Accounting Period.
Mixed Service Bundle	26.2% of TCC for the Accounting Period.
Purchased Content Locker Service	26.2% of TCC for the Accounting Period.
Standalone Limited Offering	26.2% of TCC for the Accounting Period.
Paid Locker Service	26.2% of TCC for the Accounting Period.

(2) *Step 2: Subtract applicable Performance Royalties.* From the amount determined in step 1 in paragraph (b)(1) of this section, for each Offering of the Service Provider, subtract the total amount of Performance Royalties that the Service Provider has expensed or will expense pursuant to public performance licenses in connection with uses of musical works through that Offering during the Accounting Period that constitute Licensed Activity. Although this amount may be the total of the Service Provider's payments for that Offering for the Accounting Period, it will be less than the total of the performance royalties if the Service Provider is also engaging in public performance of musical works that does not constitute Licensed Activity. In the case in which the Service Provider is also engaging in the public performance of musical works that does not constitute Licensed Activity, the amount to be subtracted for Performance Royalties shall be the amount allocable to Licensed Activity uses through the relevant Offering as determined in relation to all uses of musical works for which the Service Provider pays performance royalties for the Accounting Period. The Service Provider shall make this allocation on the basis of Plays of musical works, provided that if the Service Provider is not capable of tracking Play information, including because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings, and further provided that, if the Service Provider is also not capable of utilizing a manner consistent with a methodology used for making royalty payment allocations for the use of individual sound recordings, the Service Provider may use an alternative, good faith methodology that is reasonable, identifiable, and implemented consistently.

(3) *Step 3: Determine the payable royalty pool.* The payable royalty pool is the amount payable for the reproduction and distribution of all musical works used by the Service Provider by virtue of its Licensed Activity for a particular Offering during the Accounting Period. This amount is the greater of:

(i) The result determined in step 2 in paragraph (b)(2) of this section; and

(ii) The royalty floor (if any) resulting from the calculations described in paragraph (d) of this section.

(4) *Step 4: Calculate the per-work royalty allocation.* This is the amount payable for the reproduction and distribution of each musical work used by the Service Provider by virtue of its Licensed Activity through a particular Offering during the Accounting Period. To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the Offering. The allocation shall be accomplished by the Mechanical Licensing Collective by dividing the payable royalty pool determined in step 3 for the Offering by the total number of Plays of all musical works through the Offering during the Accounting Period (other than Plays subject to subpart D of this part) to yield a per-Play allocation, and multiplying that result by the number of Plays of each musical work (other than Plays subject to subpart D of this part) through the Offering during the Accounting Period. For purposes of determining the per-work royalty allocation in all calculations under step 4 in this paragraph (b)(4) only (*i.e.,* after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each Play shall be counted as provided in paragraph (c) of this section. Notwithstanding the foregoing, if the Service Provider is not capable of tracking Play information because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings.

(c) *Overtime adjustment.* For purposes of the calculations in step 4 in paragraph (b)(4) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of Plays as follows.

(1) 5:01 to 6:00 minutes—Each Play = 1.2 Plays.

(2) 6:01 to 7:00 minutes—Each Play = 1.4 Plays.

(3) 7:01 to 8:00 minutes—Each Play = 1.6 Plays.

(4) 8:01 to 9:00 minutes—Each Play = 1.8 Plays.

(5) 9:01 to 10:00 minutes—Each Play = 2.0 Plays.

(6) For playing times of greater than 10 minutes, continue to add 0.2 Plays for each additional minute or fraction thereof.

(d) *Royalty floors for specific types of Offerings.* The following royalty floors for use in step 3 in paragraph (b)(3) of this section shall apply to the respective types of Offerings:

(1) *Standalone non-portable Subscription Offerings—streaming only.* Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 18 cents per subscriber per Accounting Period.

(2) *Standalone non-portable Subscription Offerings—mixed.* Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 36 cents per subscriber per Accounting Period.

(3) *Standalone portable Subscription Offerings.* Except as provided in paragraphs (d)(4) and (6) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 60 cents per subscriber per Accounting Period.

(4) *Bundled Subscription Offerings.* In the case of a Bundled Subscription Offering, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 33 cents per Accounting Period for each Active Subscriber. Notwithstanding the foregoing, solely where the Licensed Activity provided as part of a Bundled Subscription Offering would qualify as a Standalone Limited Offering if offered on a standalone basis, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.

(5) *Mixed Service Bundles.* In the case of a Mixed Service Bundle, the royalty floor for use in step 3 in paragraph (b)(3) of this section is the aggregate amount

of 25 cents per Accounting Period for each Active Subscriber.

(6) *Other Offerings.* A Standalone Limited Offering, a Paid Locker Service, a Purchased Content Locker Service, and a free nonsubscription/ad-supported service free of any charge to the End User shall not be subject to a royalty floor in step 3 in paragraph (b)(3) of this section.

(e) *Computation of per-subscriber rates and royalty floors.* For purposes of this section, to determine the per-subscriber rates in step 1 in paragraph (b)(1) of this section and the royalty floors in step 3 in paragraph (b)(3) of this section, as applicable to any particular Offering, the total number of subscribers for the Accounting Period shall be calculated by taking all End Users who were subscribers for a complete Accounting Period, prorating in the case of End Users who were subscribers for only part of an Accounting Period (such proration may take into account the subscriber's billing period), and deducting on a prorated basis for End Users covered by an Offering subject to subpart D of this part, except in the case of a Bundled Subscription Offering, subscribers shall be determined with respect to Active Subscribers. The product of the total number of subscribers for the Accounting Period and the specified number of cents per subscriber (or Active Subscriber, as the case may be) shall be used as the subscriber-based components of the royalty calculation for the Accounting Period. A Family Plan subscription shall be treated as 1.75 subscribers per Accounting Period, prorated in the case of a Family Plan subscription in effect for only part of an Accounting Period. A Student Plan subscription shall be treated as 0.5 subscribers per Accounting Period, prorated in the case of a Student Plan subscription in effect for only part of an Accounting Period. A Bundled Subscription Offering containing a Family Plan with one or more Active Subscriber(s) shall be treated as having 1.75 Active Subscribers. A Bundled Subscription Offering containing a Student Plan with an Active Subscriber shall be treated as having 0.5 Active Subscribers. For the purposes of calculating per-subscriber rates and royalty floors under this section, Artificial Accounts shall not be counted as subscribers, Active Subscribers, or End Users.

■ 4. Revise subpart D, consisting of §§ 385.30 and 385.31, to read as follows:

Subpart D—Promotional Offerings, Free Trial Offerings, and Certain Purchased Content Locker Services

§ 385.30 Scope.

This subpart establishes rates and terms of royalty payments for Promotional Offerings, Free Trial Offerings, and certain Purchased Content Locker Services provided by subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115.

§ 385.31 Royalty rates.

(a) *Promotional Offerings.* For Promotional Offerings of audio-only Eligible Interactive Streams and Eligible Limited Downloads of sound recordings embodying musical works that the Sound Recording Company authorizes royalty-free to the Service Provider, the royalty rate is zero.

(b) *Free Trial Offerings.* For Free Trial Offerings, the royalty rate is zero.

(c) *Certain Purchased Content Locker Services.* For every Purchased Content Locker Service for which the Service Provider receives no monetary consideration, the royalty rate is zero.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2022–24300 Filed 11–3–22; 4:15 pm]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0612; FRL–10300–01–R8]

Approval and Promulgation of Implementation Plans; Colorado; Revisions to Colorado Code of Regulations; Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Regulation Number 3 of the Colorado Code of Regulations (CCR) submitted to the EPA by the State of Colorado on March 22, 2021. These revisions reflect changes made by the State to update dates of incorporation by reference of sections of the Code of Federal Regulations (CFR) related to Global Warming Potentials (GWPs). The revisions also include updated references to other sections of the CCR that were previously moved to a new location as well as changes to Regulation 3 to reflect digitalization of public notice and comment procedures. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 7, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0612, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6709, email address: *lang.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.