

## § 260.7

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the designated agent. Such notice of intent shall also be served at the same time on the designated agent to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the FEDERAL REGISTER a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the designated agent shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those individuals or entities who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

### § 260.7 Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three-year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset the cost of the administration of the collection and distribution of the royalty fees.

[63 FR 25413, May 8, 1998, as amended at 64 FR 36576, July 7, 1999]

EFFECTIVE DATE NOTE: At 68 FR 36470, June 18, 2003, § 260.7 was amended by removing the word "collecting" after the phrase "If the designated"; by removing the word "collecting" each place it appears and adding the word "designated" in its place; and in the last sentence, by removing the word "fees" and adding the word "payments" in its place, effective July 18, 2003.

## 37 CFR Ch. II (7-1-03 Edition)

### PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS

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AUTHORITY: 17 U.S.C. 112(e), 114, 801(b)(1).

SOURCE: 67 FR 45272, July 8, 2002, unless otherwise noted.

#### § 261.1 General.

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

#### § 261.2 Definitions.

For purposes of this part, the following definitions shall apply:

*Aggregate Tuning Hours* mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to