

each distant broadcast signal be attributed throughout the entire subscription base, even if many subscribers do not actually receive the signal. The Copyright Office has historically required such attribution, based upon its interpretation that the Copyright Act permits only allocation of gross receipts among subscriber groups for partially local/partially distant signals. Does the 1992 Cable Act, or other circumstances, warrant a change in this interpretation? If so, on what basis?

(b) It has been suggested by some that the Copyright Office should permit creation of subscriber groups for *a la carte* broadcast signals, and allow cable operators to allocate gross receipts only to those subscribers who select and receive a particular signal. Thus, for example, if a cable system has 1000 subscribers and only 500 of them choose to receive superstation X, the distant signal equivalent (DSE) value generated by superstation X would only be applied against the gross receipts generated from the 500 subscribers who took the superstation, as opposed to applying it against the system's total gross receipts.<sup>4</sup>

One concern with allowing that would be that it would offer the cable system an incentive to pull its distant signals from its basic tier offering, and offer them only as *a la carte* signals, thus reducing the subscriber base from which the royalty is calculated.

The Cable Act of 1992 has made it more difficult for cable systems to restructure their distant signal offerings because it states that, for a basic tier subject to rate regulation, "such basic service tier shall, at a minimum, consist of \* \* \* (iii) any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station." 47 USC 543 (b) (7) (iii).

Therefore, for distant signals that are imported by means other than satellite carrier, if the cable system offers it to one subscriber, it must offer it to all on the basic tier. In 1989, 48.2% of all instances of distant signal carriage on a Form 3 cable system were by means other than satellite carrier. 1989 Cable Royalty Distribution Proceeding, 57 FR 15286, 15294 (1992).

However, 51.8% of distant signal carriage in 1989 was by means of satellite carrier, and those signals could be pulled from the basic tier without

violating the 1992 Cable Act. In addition, cable systems that are not subject to basic tier rate regulation because there is effective competition in the system's franchise area, are also free to restructure.

What would be the statutory basis for allowing *a la carte* allocation, and what effect would it have on the total amount of royalties paid?

(c) If the Copyright Office allowed the type of gross receipts allocation described in question (b), what is the proper royalty rate to assess against the gross receipts of each subscriber group? For example, if a cable system carried two distant signals on an *a la carte* basis, one a permitted signal and the other a non-permitted signal at the 3.75% rate, how can it be determined which subscriber group is receiving the less expensive base rate permitted signal, and which group is receiving the more expensive 3.75% rate non-permitted signal? Obviously, there is a powerful incentive for the cable operator to assign the 3.75% rate to the signal with the fewest subscribers, and hence the lowest amount of gross receipts. A similar problem occurs in applying the decreasing rates for permitted signals. Are there any fixed factors which the Copyright Office could apply to prevent the repeated occurrence of applying the lower rate against the higher gross receipts? What effect would that have on the total royalty pool generated by section 111?

The Copyright Office requests comment on the questions raised in this extended comment period, as well as any other issues related to compulsory license royalty payments for *a la carte* offerings of broadcast signals.

#### List of Subjects

Cable compulsory license; Cable television systems.

Dated: December 29, 1994.

**Marybeth Peters,**  
*Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OAQPS No. CA-95-6639; FRL-5134-4]

#### Approval and Promulgation of Implementation Plans; California Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from polystyrene foam, polyethylene, and polypropylene manufacturing and polyester resin operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** Comments must be received on or before February 8, 1995.

**ADDRESSES:** Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the new rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95814.

San Joaquin Valley Unified Air  
Pollution Control District 1999  
Tuolumne Street, Fresno, CA 93721.

**FOR FURTHER INFORMATION CONTACT:**  
Christine Vineyard, Rulemaking Section [A-5-3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San

<sup>4</sup>This example assumes the cable system is an SA-3 form system, and therefore makes royalty payments based on the number of DSE's carried.