

applicable law, the FAA prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) dated February 3, 2004. The EA/FONSI analyzed the establishment of the restricted area to support the deployment of a moored weather research balloon as one of the actions included in the DOE EA for the research program dated February 1997. This final rule will not result in significant environmental impacts.

#### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

#### PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

#### § 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

\* \* \* \* \*

#### R-2204 Oliktok Point, AK (New)

Boundaries. Within a 2 nautical mile radius centered at (lat. 70°30'5" N., long. 149°51'33" W.).

Designated altitudes. Surface to, but not including, 7,000 feet MSL.

Time of designation. By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM.

\* \* \* \* \*

Issued in Washington, DC, on May 21, 2004.

**Paul Gallant,**

*Acting Manager, Airspace and Rules, ATO–R.*

[FR Doc. 04–12063 Filed 5–27–04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01–04–036]

#### Drawbridge Operation Regulations: Cheesequake Creek, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit Rail Operations railroad bridge, at mile 0.2, across Cheesequake Creek, New Jersey. Under this temporary deviation the bridge may remain closed for two weekends May 14 & 15, 2004, and May 21 & 22, 2004, from 11 p.m. on Friday through 8 a.m. on Saturday to facilitate scheduled bridge maintenance. One alternate weekend date of June 4 & 5, 2004, was also requested in case of inclement weather.

**DATES:** This deviation is effective from May 14, 2004 through June 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

**SUPPLEMENTARY INFORMATION:** The New Jersey Transit Rail Operations railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.709(b).

New Jersey Transit Rail Operations requested a temporary deviation from the drawbridge operation regulations to facilitate repairs to the miter rails at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the New Jersey Transit Rail Operations railroad bridge may remain in the closed position on two weekends May 14 & 15, 2004, and May 21 & 22, 2004, from 11 p.m. on Friday through 8 a.m. on Saturday. One alternate weekend date of June 4 & 5, 2004, was also requested as alternate dates in case inclement weather results in cancellation of the scheduled bridge maintenance.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 14 2004.

**Vivien S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 04–12131 Filed 5–27–04; 8:45 am]

BILLING CODE 4910–15–P

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 252 and 257

[Docket No. 2004–3 CARP]

#### Filing of Claims for Cable and Satellite Royalties

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Waiver of regulation.

**SUMMARY:** Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the cable and satellite royalty funds for the year 2003. In order to ensure that claims are received timely, claimants are encouraged to file their cable and satellite claims online, utilizing the special procedures described in this document.

**EFFECTIVE DATE:** May 28, 2004.

**ADDRESSES:** Online submissions should be made to the following: for cable claims <http://www.copyright.gov/carp/cable/claims.html>; for satellite claims <http://www.copyright.gov/carp/satellite/claims.html>. See **SUPPLEMENTARY INFORMATION** for information about online electronic filing through the Copyright Office website. If hand delivered by a private party, an original and two copies of each claim should be brought to: Room LM–401 of the James Madison Memorial Building and addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000 between 8:30 am and 5 pm. If delivered by a commercial courier, an original and two copies of each claim must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO

Box 70977, Southwest Station, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:**

Tanya Sandros, Senior Attorney, or Gina Giuffreda, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 111 of the Copyright Act, 17 U.S.C., places a statutory obligation on cable systems who retransmit over-the-air broadcast signals to submit royalty fees to the Copyright Office for such retransmissions. Distribution of the royalty fees is made to copyright owners whose works were embodied in those retransmissions made by cable systems. 17 U.S.C. 111(d)(3). In order to claim eligibility for a distribution of cable royalty fees, a claimant must submit to the Copyright Office a claim during the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 111(d)(4)(A). The regulations governing the content and submission of cable claims are found at 37 CFR part 252.

Likewise, copyright owners whose works were embodied in over-the-air television broadcast signals retransmitted by satellite carriers may seek a distribution of the satellite royalty fees collected by the Copyright Office. 17 U.S.C. 119. Eligibility for satellite royalty fees is predicated upon the submission of a claim in the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 119(b)(4)(A). The regulations governing the content and submission of satellite claims are found at 37 CFR part 257.

As a general rule, a cable or satellite claim is considered timely filed with the Copyright Office if it is hand delivered to the correct office within the Copyright Office during the month of July, or if it is mailed to the correct address and it bears a July U.S. Postal Service postmark. See 37 CFR 252.4 (cable); 37 CFR 257.4 (satellite). However, because July 31 falls on a Saturday this year, the deadline is Monday, August 2.<sup>1</sup> The regulations do

not provide for the filing of cable and satellite claims by alternative methods such as electronic submission.

Unfortunately, the Office has experienced disruptions of postal service since October 17, 2001. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). While mail delivery to the Office has resumed, the Office continues to experience delays in receipt of its mail, due in part to the diversion of mail to an off-site location for screening. Consequently, during the past two years, the Office has offered and recommended alternative methods for the filing of cable and satellite claims to the 2001 and 2002 royalty funds. See 67 FR 21176 (April 30, 2002) and 68 FR 32381 (May 30, 2003). Because mail will continue to be diverted to an off-site location for screening, the Office anticipates issuing by the end of 2004 new regulations providing for a permanent system of electronic filing of claims. However, since such regulations are not in place at this time, the Office is offering and recommending the same alternative filing methods this year for claims to the 2003 royalty funds.

Moreover, claimants are strongly advised to send their claims early in the month of July. Persons submitting claims at the end of the month risk missing the deadline for submission of claims. Online forms are available and may be submitted via the Office's Web site. Note, however, that the alternative methods set forth in this Notice apply only to the filing of cable and satellite claims for the 2003 royalties which are due on or before August 2, 2004, and in no way apply to other filings with the Office. Please note that as a result of July 31 falling on a Saturday this year, cable and satellite claims are due on Monday, August 2, 2004, in accordance with 37 CFR 252.4(b) and 257.4(b).

Claimants are further advised that this Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR parts 252 (cable) and 257 (satellite).

**Acceptable Methods of Filing Cable and Satellite Claims for the Year 2003**

Claims to the 2003 cable and satellite royalty funds may be submitted as follows:

*a. Online Submission*

In order to best ensure the timely receipt by the Copyright Office of cable and satellite claims, the Office strongly encourages claimants to file their claims online by or before 11:59 p.m. on August 2, 2004, via the Copyright Office

Web site. The Office has devised online electronic forms for filing both single and joint cable and satellite claims. Claimants will be able to access and complete the forms via the Copyright Office Web site and may submit the forms electronically as provided in the instructions accompanying the forms. Cable forms will be posted on the Office Web site at "<http://www.copyright.gov/carp/cable/claims.html>". Satellite forms will be posted at "<http://www.copyright.gov/carp/satellite/claims.html>". Claimants filing a joint claim may list each of their joint claimants directly on the Office's online joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or (in the case of text-only files) in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the names and addresses of the joint claimants. See 37 CFR 252.3(b)(1) and 257.3(b)(1).

The cable and satellite forms will be available for use from July 1, 2004, through August 2, 2004. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted online using forms or formats other than those specified in this Notice WILL NOT BE ACCEPTED by the Office. Claims filed online must be received by the Office no later than 11:59 p.m. E.D.T. on August 2, 2004. Specifically, the completed electronic forms must be received by the Office's server by that time. Any claim received after that time will be considered as untimely filed. Claimants who file electronically will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address claimants are advised to print a copy of the confirmation report and retain it as proof of a timely filing. Because of the possibility, however remote, that the Office's online filing system might be inaccessible the evening of August 2 for reasons beyond the Office's control, claimants submitting their claims online are strongly encouraged to submit their claim no later than July 31, 2004.

When filing claims online, all provisions set forth in 37 CFR parts 252 and 257 apply except §§ 252.3(b)(5) and 257.3(b)(5), which require the original

<sup>1</sup> In any year in which July 31 falls on Saturday, Sunday, a holiday or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August or claims that are properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed. 37 CFR 252.4(b), 257.4(b).

signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures. However, the Office anticipates issuing regulations providing for a permanent system of electronic filing of claims by the end of 2004.

**b. Hand Delivery by Private Party**

The Office encourages claimants who do not file their claims electronically to deliver their claims personally by 5 p.m. E.D.T. on any business day, during the month of July 2004 and no later than August 2, 2004. Claimants are reminded that on February 4, 2004, the Office adopted a new policy for the hand delivery of documents to the Office of the Copyright Office General Counsel. 69 FR 5371 (February 4, 2004). Therefore, claimants personally delivering their claims should deliver their claims to the Copyright Office's Public Information Office located at LM-401 of the James Madison Memorial Building. To ensure that the claims are directed to the Office of the General Counsel, an original and two copies of each claim should be placed in an envelope addressed in the following manner: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, LM-401, First and Independence Avenue, SE., Washington, DC 20559-6000. The Public Information Office is open Monday-Friday, 8:30 a.m. to 5 p.m., except Federal holidays.

If a claimant does not address the envelope in accordance with the instructions herein and the envelope is misdirected and consequently does not reach the Public Information Office by 5 p.m. on Monday, August 2, 2004, such claims will be considered as untimely filed and will be rejected. Claimants should also note that the Public Information Office closes promptly at 5 p.m. The Copyright Office will not accept any claim that a claimant attempts to deliver after the Public Information Office has closed.

In addition, claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

**c. Hand Delivery by Commercial Courier**

Since December 29, 2003, the Library of Congress has not accepted in-person, on-site deliveries from non-governmental, commercial couriers or messengers. See 68 FR 70039 (December 16, 2003). Instead, such couriers must deliver materials for staff at the Library,

including cable and satellite claims, directly to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, e.g., a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m. The envelope containing an original and two copies of each claim should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received by CCAS which does not have a date stamp of August 2, 2004, or earlier, will be considered untimely for this filing period and will be rejected by the Copyright Office.

Claimants delivering their claims by commercial courier should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

**d. By Mail**

Sections 252.4(a)(2) and 257.4(a)(2) direct claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to secure the only acceptable proof of a timely filing by mail, should the claim reach the Office after August 2, 2004. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the month of July, or by August 2, 2004, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 252.4(e) and 257.4(e). Claims received after July 31, or the first business day in August when appropriate, with only a business meter mark will be rejected as untimely unless the claimant is able to produce the certified mail receipt. See *Universal Studios LLLP v. Peters*, 308 F.Supp.2d 2004 (D.D.C. 2004); *Metro-Goldwyn-Mayer Studios, Inc. v. Peters*, No. 03-1079, 2004 U.S. Dist. LEXIS 5399 (D.D.C. Mar. 24, 2004).

As noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail

by the Copyright Office. Such delays may hamper the Office's ability to compile a claimant list and may affect the Office's ability to make partial distributions of cable and satellite funds not in controversy. Consequently, the Office suggests that claimants use the mail (and preferably certified mail, return receipt requested) only if none of the other methods outlined above are feasible.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 252 for cable claims and part 257 for satellite claims.

**Faxes Not Accepted**

Although the Copyright Office accepted the submission of 2003 Digital Audio Recording Technology ("DART") claims via facsimile transmission, the Office has determined that, due to the high volume of cable and satellite claims received by the Office relative to DART claims, it is administratively too burdensome to permit the faxing of cable and satellite claims. Consequently, any cable or satellite claims received by the Copyright Office via facsimile transmission WILL NOT BE ACCEPTED.

**Waiver of Regulation**

The regulations governing the filing of cable and satellite claims require "the original signature of the claimant or of a duly authorized representative of the claimant." § 252.3(b) (cable); § 257.3(b) (satellite). This document, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2003 cable and satellite royalty funds. The Office is not waiving the statutory deadline for filing either cable or satellite claims, a deadline the Office has no power to waive. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by August 2, 2004.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (DC Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (DC Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, due to the continued problems with the delivery of the mail and the transition to an electronic filing system, the Office believes that under these special circumstances the public interest will best be served by waiving, for this filing period, the requirement that cable and satellite claims bear the original signature of the claimant or of a duly

authorized representative of the claimant when, and only when, such claim is filed electronically.

Dated: May 24, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04-12142 Filed 5-27-04; 8:45 am]

BILLING CODE 1410-33-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 440

[CMS-2132-F]

RIN 0938-AM26

#### Medicaid Program; Provider Qualifications for Audiologists

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule will revise the requirements for audiologists furnishing services under the Medicaid program. As a result, the requirements will create consistency with the Medicare program's definition of a qualified audiologist by recognizing State licensure in determining provider qualifications. These revised standards will expand State flexibility in choosing qualified audiologists.

**DATES:** *Effective Date:*

These regulations are effective on June 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Clarkson, (410) 786-5918.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Medicaid Requirements

Medicaid is the Federally assisted State program authorized under title XIX of the Social Security Act (the Act) that provides funding for medical care provided to certain needy aged, blind, and disabled persons, families with dependent children, and low-income pregnant women and children. Each State determines the scope of its program, within limitations and guidelines established by the law and implementing regulations at 42 CFR chapter IV, subchapter C. Each State submits a State plan that, when approved by us, provides the basis for granting Federal funds to cover part of the expenditures incurred by the State for medical assistance and the administration of the program.

Section 1902(a) of the Act specifies the eligibility requirements that individuals must meet in order to receive Medicaid. Other sections of the Act describe the eligibility groups in detail and specify limitations on what may be paid for as "medical assistance." Under section 1905(a) of the Act, States must provide certain basic services. Section 1905(a) of the Act also identifies categories of services States may provide as medical assistance.

##### Audiology Services

Under the Medicaid program, States have the option of providing services for individuals with speech, hearing, and language disorders. Services for individuals with speech, hearing, and language disorders historically have been permitted under the Secretary's discretionary authority under section 1905(a)(11) of the Act, which authorizes the Medicaid program to make Federal funding available for State expenditures under an approved State Medicaid plan for audiology services for eligible individuals provided by audiologists meeting the provider requirements stipulated in Federal regulations at 42 CFR 440.110(c). States have discretion to further define audiology services by specifying the amount, duration, and scope of the service. Furthermore, while States can elect whether they plan to provide audiology services to their adult Medicaid population, they are mandated to provide all medically necessary services to Medicaid-eligible persons under 21 years of age under the Federally mandated Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. Combined with requirements for providing services to children with disabilities under the Individuals with Disability Education Act (IDEA) (Pub. L. 105-17, enacted on June 4, 1997), Medicaid is responsible for payment of a substantial number of school-based speech, hearing, and language services provided by, or under the direction of, qualified providers defined at § 440.110(c).

Under Medicaid, States are permitted the flexibility to provide audiology services under a variety of benefits. The majority of States offering audiology services do so under their home health benefit defined at § 440.70, or under optional benefits such as the therapies benefit defined at § 440.110, the rehabilitation benefit defined at § 440.130(d), or the clinic benefit defined at § 440.90. However, regardless of the benefit used to provide audiology services, the specific provider requirements at § 440.110(c) must be adhered to. Current Medicaid rules governing audiology services also

permit States the flexibility to provide audiology services by, or under the direction of, a qualified audiologist. This flexibility is recognized and widely used by States to provide audiology services to Medicaid-eligible children under IDEA in school-based settings.

Existing regulations at § 440.110(c)(2) require audiologists to hold a certificate of clinical competency from the American Speech-Hearing-Language Association (ASHA), or its equivalent, to furnish audiology services. Individuals with speech, hearing, and language disorders must be referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law.

##### B. Medicare Audiology Requirements

Before the Social Security Amendments of 1994 (Pub. L. 103-432, enacted on October 31, 1994), statutory requirements governing the Medicare program required speech pathologists and audiologists to meet the academic and clinical experience requirements for a Certificate of Clinical Competence (CCC-A) granted by ASHA. In accordance with section 146 of the Social Security Amendments of 1994, Medicare revised its statutory requirements for speech pathologists and audiologists, removing the requirement for ASHA certification and placing primary reliance for determining provider qualifications on State licensure.

In summary, section 1861(l)(3)(B) of the Act currently governing Medicare audiology services, defines an audiologist as an individual with a master's or doctoral degree who is licensed by the State or who meets specific academic and clinical requirements if providing services in a State that does not license audiologists.

Unlike the Medicaid program, Medicare does not permit audiology services to be provided under the direction of a qualified audiologist.

##### C. Creating Consistency With the Medicare Program

As noted in our April 2, 2003, proposed rule (68 FR 15974), the revision of the Medicare requirements in 1994 prompted letters from audiology professionals and interested congressional members urging us to create consistency in the Medicaid and Medicare programs' definition of a qualified audiologist by adopting the Medicare definition of qualified audiologist to recognize the role of State licensure in defining a Medicaid qualified audiologist. Proponents recommending the change stated that