

	Collection No. [3038-0009]
Number of respondents	9
Frequency of response	On occasion

List of Subjects in 17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Commodity futures, Cotton, Grains, Position limits, Spread exemptions.

In consideration of the foregoing, pursuant to the authority contained in

the Commodity Exchange Act, the Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, and 12a(5), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

SPECULATIVE POSITION LIMITS

[In contract units]

Contract	Spot month	Single month	All months
Chicago Board of Trade			
Corn and Mini Corn ¹	600	13,500	22,000
Oats	600	1,400	2,000
Soybeans and Mini Soybeans ¹	600	6,500	10,000
Wheat and Mini Wheat ¹	600	5,000	6,500
Soybean Oil	540	5,000	6,500
Soybean Meal	720	5,000	6,500
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	5,000	6,500
New York Board of Trade			
Cotton No. 2	300	3,500	5,000
Kansas City Board of Trade			
Hard Winter Wheat	600	5,000	6,500

¹ For purposes of compliance with these limits, positions in the regular sized and mini-sized contracts shall be aggregated.

Issued by the Commission this 7th day of March, 2005, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-5088 Filed 3-14-05; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

RIN 1010-AD16

Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Cost Recovery

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to modify its regulations to change some existing fees and implement several new fees. The proposed fees would offset MMS's costs of performing certain services relating to its minerals programs.

DATES: MMS will consider all comments received by April 14, 2005. MMS may

not fully consider comments received after April 14, 2005.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use 1010-AD16 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- MMS's Public Connect on-line commenting system, <https://occonnect.mms.gov>. Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at rules.comments@mms.gov. Identify the Regulation Identifier Number (RIN) in the subject line.
- Fax: (703) 787-1093. Identify the RIN.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Rules Processing Team (RPT). Please reference "Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf—

2. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

Cost Recovery—AD16" in your comments.

FOR FURTHER INFORMATION CONTACT:

Angela Mazzullo, Offshore Minerals Management (OMM) Budget Office at (703) 787-1691.

SUPPLEMENTARY INFORMATION:

Background

Legal Authority and Policy Guidance: The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, is a general law applicable Government-wide, that provides authority to MMS to recover the costs of providing services to the non-federal sector. It requires implementation through rulemaking. There are several policy documents that provide guidance on the process of charging applicants for service costs. These policy documents are found in the Office of Management and Budget (OMB) Circular A-25, "User Charges," and the Department of the Interior Departmental Manual (DM), 330 DM 1.3A & 6.4, "Cost Recovery" and "User Charges." The general policy that

governs charges for services provided states that a charge “will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public” (OMB Circular A–25). The Department of the Interior Manual mirrors this policy (330 DM 1.3 A.). Certain activities may be exempted from these fees under certain conditions set out at 330 DM 1.3A & 6.4.4.

Cost Recovery Definition: In this rulemaking, cost recovery means reimbursement to MMS for its costs of performing a service by charging a fee to the identifiable applicant/beneficiary of the service. Further guidance is provided by Solicitor’s Opinion M–36987, “BLM’s Authority to Recover Costs of Mineral Document Processing” (December 5, 1996). The Department of the Interior Office of Inspector General

issued reports in 1988 and 1995 addressing BLM’s cost recovery responsibilities.

Proposed Regulation

How Did MMS Determine What Services It Would Propose for Cost Recovery in This Proposed Rule?

An MMS cost recovery team, drawn from both the Regional and Headquarters Offshore Minerals Management (OMM) offices, reviewed the statutory language found in the United States Code and OMB, Departmental, Bureau, and Solicitor Opinion guidance to evaluate what services were eligible for cost recovery. Since the authority is rather broad, the team chose to focus on whether the service provided results from compliance with a statutory

requirement related to doing business on the Outer Continental Shelf (e.g., Initial Designation of Operator), or from an activity exercised at the option of the applicant/beneficiary outside of a statutory requirement (e.g., Change of Designation of Operator). The services proposed for cost recovery action at this time are limited to those that fall into the latter category of activities exercised at the option of the applicant/beneficiary.

Which MMS Services Would be Subject to a Cost Recovery Fee?

The following table lists the services that are proposed to be subject to a cost recovery fee for the first time under this proposed rule and those services for which MMS proposes to revise existing fees.

Service	Current fee	Proposed fee	30 CFR citation
Change in Designation of Operator	(¹)	\$140	\$ 250.143
Suspensions of Operations/Suspensions of Production (SOO/SOP) Request	(¹)	1,700	\$ 250.171
Pipeline Right-of-Way (ROW) Grant Application	\$2,350	1,100	\$ 250.1015
Pipeline Conversion of Lease Term to ROW	300	180	\$ 250.1015
Pipeline ROW Assignment	60	160	\$ 250.1018
500 feet from Lease/Unit Line Production Request	(¹)	3,100	\$ 250.1101
Gas Cap Production Request	(¹)	4,000	\$ 250.1101
Downhole Commingling Request	(¹)	4,600	\$ 250.1106
Voluntary Unitization Proposal or Unit Expansion	(¹)	10,000	\$ 250.1303
Unitization Revision and Modification	(¹)	720	\$ 250.1303
Record Title/Operating Rights (Transfer)	185	160	\$ 256.64
Non-required Document Filing	25	170	\$ 256.64

¹ None.

What Type of Fees Does This Regulation Create?

This rule establishes fixed fees for certain OMM services based on cost recovery principles. A fixed fee remains the same for each request of a particular type. We considered determining and charging fees on a case-by-case basis, but proposes to assess fixed fees because of the broad similarity of the work required to process each request of a particular type.

Additionally, the fixed fee approach provides more objectivity and certainty as each applicant faces the same predetermined fee structure. Finally, a fixed fee is less administratively burdensome on both MMS and industry than an approach based on tracking ongoing processing costs of individual documents.

What Are the Fee Amounts Based On?

We considered various factors in determining the proposed fee amounts. These factors included actual costs, the monetary worth of the services to the applicant, and whether the services provide a benefit to the general public.

MMS determined that the monetary value of each of the eligible services was greater than the processing costs, while the public benefit of the services was small and speculative relative to the processing costs. MMS concluded that an actual cost method for calculating fee amounts is the most appropriate way to achieve the cost recovery objectives of the IOAA statute.

The proposed cost methodology includes the sum of both direct costs and indirect costs. The direct costs are comprised of the salaries, benefits, and special materials or equipment (when applicable) attributed to processing each task-specific function of a request. The labor component is sub-divided by various steps in each process and by the hours spent for each employee involved in the task. The indirect costs include, but are not limited to, items such as office space, insurance, postage, computers, phones, fax machines, and general supplies not associated with a task specific request. To recover these types of costs, an indirect cost rate of 15 percent of the direct costs is applied.

How Did MMS Determine the Costs To Be Covered by the Proposed Fees?

The team created a template for each service for which a fee is proposed. The template listed the sub-processes needed to provide each service. Next, the staff that provided the services filled in the specific direct cost information associated with each of these activities. This data was compiled into a cost matrix for all Regions, request types, and yearly number of transactions, and then consolidated to set the fees proposed in § 250.125 and § 256.63.

Were There Differences in the Processing Costs and Number of Transactions Among the Regional Offices?

Yes. These differences were primarily attributable to the varying levels of offshore oil and gas activity across the Regions. We reconciled these differences with a weighted-average method that gives greater weight to costs from Regional offices with heavy workloads, and thus more expertise, in providing certain services. Using the number of yearly transactions in each

Region, we weighted each Region's costs to determine the average fixed fee that we propose to apply to all Regions. Since the Gulf of Mexico (GOM) Region has the majority of transactions, most of the proposed fixed fees are similar to the costs in the GOM Region.

Would the Proposed Fees be Adjusted for Inflation?

Yes. Since we used current salary and expense levels, the cost estimates reflect current dollars. To keep the costs in line with inflation, we propose to adjust the fees every five years according to the Implicit Price Deflator for the Gross Domestic Product (GDP), starting in 2005 dollars. This inflation index, as published by the U.S. Department of Commerce, is generally accepted by economists as the most reliable general price index and used by MMS for other inflationary adjustments. We propose to escalate for inflation on a five year basis because we estimate that as a significant interval of time to reflect inflationary adjustments. Because we would establish the process for changing fees in this rule, and the application of that process is simply a mathematical calculation, we would adjust the fees without publishing a proposed rule for notice and comment, and post them on our Web site. We would also review our costs for administering each type of request every two years. If we decide to amend fees based on something other than the Implicit Price Deflator GDP, we would do so through proposed rulemaking with a comment period.

Procedural Matters

Public Comment Procedures

All submissions received must include the agency name and RIN for this rulemaking. Our practice is to make comments, including names and addresses of respondents, available for public review. E-mail address is considered a form of address. Individual respondents may request that we withhold their addresses from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

(1) This proposed rule would not have an annual effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule establishes fees based on cost recovery principles. Based on historical filings, we project the fees will raise revenue by approximately \$2 million annually.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the costs incurred are for specific MMS services and other agencies are not involved in these aspects of the OCS program.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This change will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs. The fees proposed by this rule are service fees based on cost recovery, and not user fees.

(4) This proposed rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

This proposed change would affect lessees and operators of leases in the OCS. This includes about 130 Federal oil and gas lessees and 115 holders of pipeline rights-of-way. Small lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes (NAICS) 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This proposed rule, therefore, affects a substantial number of small entities.

The fees proposed in the rule would not have a significant economic effect on a substantial number of small entities

because the fees are very small compared to normal costs of doing business on the OCS. For example, depending on water depth and well depth, cost estimates for drilling a well range from \$5 million to \$23 million. Thus the proposed fees, ranging from \$140 to \$10,000, are dwarfed by the millions of dollars that industry already commits to exploration, development, and production.

Additionally, the fees proposed in the rule would apply to both large and small firms in the same way. Also, applying for MMS services provides a benefit to the applicant (both large and small) if the applicant decides to operate in the OCS.

Comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Would not have an annual effect on the economy of \$100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the United States. This rule does not change that requirement.

Paperwork Reduction Act (PRA) of 1995

The proposed rulemaking related to 30 CFR part 250, subparts A, J, K, and M, and to 30 CFR part 256, subpart J. The rulemaking affects the information collections for these regulations but will not change the approved burden hours, just the associated fees. Therefore, OMB

has ruled that there is no change in the information collection and that MMS does not need to make a formal submission by Form OMB 83-I for this rulemaking. When the rule is finalized, we will submit Form OMB 83-C to modify the fees in each collection.

OMB has approved the information collections for the affected regulations as 30 CFR part 250, subpart A, OMB Control Number 1010-0114 (expiration 10/31/07); subpart J, 1010-0050 (expiration 1/31/06); subpart K, 1010-0041 (expiration 7/31/06); and subpart M, 1010-0068 (expiration 8/31/05); and as 30 CFR part 256, subpart J, 1010-0006, (expiration 3/31/07).

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the proposed rule would not have federalism implications. It would not substantially and directly affect the relationship between the Federal and State Governments. To the extent that State and local governments have a role in OCS activities, this proposed change would not affect that role.

Takings Implication Assessment (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule would not have significant takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

MMS analyzed this proposed rule using the criteria of the NEPA and 516 Departmental Manual, Chapter 2, and concluded that the preparation of an environmental analysis which would

result in the issuance of a Finding of No Significant Impact or the preparation of an environmental impact statement would not be required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal would not affect State, local, or tribal governments, and the effect on the private sector is small.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

Effects on the Nation's Energy Supply (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore does not require a Statement of Energy Effects, because it:

- (1) Is not a significant regulatory action under Executive Order 12866,
- (2) Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and
- (3) Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, as a significant energy action.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public

lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Minerals Management Service, Oil and gas exploration, Public lands-mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: February 16, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 250 and 256 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In 30 CFR part 250, subpart A, a new § 250.125 is added and a new undesignated center heading is added preceding the new § 250.125 to read as follows:

Subpart A—General

* * * * *

Fees

§ 250.125 Service fees.

The table in this section shows the fees that you must pay to MMS for the services listed. All fees are nonrefundable. The fees will be adjusted every five years, or more frequently as needed, according to the Implicit Price Deflator for Gross Domestic Product, and the updated amounts will be posted on our Web site. MMS will re-examine the cost methodology of the fees every two years. If a significant adjustment is needed to arrive at the new actual cost, a proposed rule containing the new fees will be published for comment.

FY 2005 SERVICE FEE TABLE

Service	Proposed fee	30 CFR citation
(1) Change In Designation of Operator	\$140	§ 250.143
(2) Suspension of Operations/Suspension of Production (SOO/SOP) Request	1,700	§ 250.171
(3) Pipeline Right-of-Way (ROW) Grant Application	1,100	§ 250.1015
(4) Pipeline Conversion of Lease Term to ROW	180	§ 250.1015

FY 2005 SERVICE FEE TABLE—Continued

Service	Proposed fee	30 CFR citation
(5) Pipeline ROW Assignment	160	§ 250.1018
(6) 500 feet from Lease/Unit Line Production Request	3,100	§ 250.1101
(7) Gas Cap Production Request	4,000	§ 250.1101
(8) Downhole Commingling Request	4,600	§ 250.1106
(9) Voluntary Unitization Proposal or Unit Expansion	10,000	§ 250.1303
(10) Unitization Revision and Modification	720	§ 250.1303

3. In § 250.143, add a new paragraph (d) to read as follows:

§ 250.143 How do I designate an operator?

* * * * *

(d) If you change the designated operator on your lease, you must pay the service fee listed in § 250.125 of this subpart with your request for a change in designation of operator.

4. In § 250.171, add a new paragraph (e) to read as follows:

§ 250.171 How do I request a suspension?

* * * * *

(e) You must pay the service fee listed in § 250.125 of this subpart with your request for a SOO or SOP.

5. In § 250.1015, paragraph (a) is revised to read as follows:

§ 250.1015 Applications for pipeline right-of-way grants.

(a) You must submit an original and three copies of an application for a new or modified pipeline ROW grant to the Regional Supervisor. The application must address those items required by § 250.1007 (a) or (b) of this subpart, as applicable. It must also state the primary purpose for which you will use the ROW grant. If the ROW has been used before the application is made, the application must state the date such use began, by whom, and the date the applicant obtained control of the improvement. When you file your application, you must pay the rental required under § 250.1012 of this subpart, as well as the service fees listed in § 250.125 of this part for a pipeline ROW grant to install a new pipeline, or to convert an existing lease term pipeline into a ROW pipeline. An application to modify an approved ROW grant must be accompanied by the additional rental required under

§ 250.1012 of this subpart if applicable. You must file a separate application for each ROW.

* * * * *

6. In § 250.1018, paragraph (b) is revised to read as follows:

§ 250.1018 Assignment of pipeline right-of-way grants.

* * * * *

(b) Any application for approval for an assignment, in whole or in part, of any right, title, or interest in a right-of-way grant must be accompanied by the same showing of qualifications of the assignees as is required of an applicant for a ROW in § 250.1015 of this subpart and must be supported by a statement that the assignee agrees to comply with and to be bound by the terms and conditions of the ROW grant. The assignee must satisfy the bonding requirements in § 250.1011 of this part. No transfer will be recognized unless and until it is first approved, in writing, by the Regional Supervisor. The assignee must pay the service fee listed in § 250.125 of this part for a pipeline ROW assignment request.

7. In § 250.1101, add a new paragraph (f) to read as follows:

§ 250.1101 General requirements and classification of reservoirs.

* * * * *

(f) You must pay the service fee listed in § 250.125 of this part with your request for either a 500 feet from lease/unit line production interval or to produce from a completion in an associated gas cap of a sensitive reservoir under this section.

8. In § 250.1106, add a new paragraph (d) to read as follows:

§ 250.1106 Downhole commingling.

* * * * *

(d) You must pay the service fee listed in § 250.125 of this part with your request for downhole commingling.

9. In § 250.1303, add a new paragraph (d) to read as follows:

§ 250.1303 How do I apply for voluntary unitization?

* * * * *

(d) You must pay the service fee listed in § 250.125 of this part with your request for a voluntary unitization proposal or unit expansion. Additionally, you must pay the non-refundable service fee listed in § 250.125 with your request for unitization revision and modification.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

10. The authority citation for 30 CFR part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*; 42 U.S.C. 6213.

11. Add a new § 256.63 to read as follows:

§ 256.63 Service fees.

The table in this section shows the fees that you must pay to MMS for the services listed. All fees are nonrefundable. The fees will be adjusted every five years, or more frequently as needed, according to the Implicit Price Deflator for Gross Domestic Product, and the updated amounts will be posted on our Web site. MMS will re-examine the cost methodology of the fees every two years. If a significant adjustment is needed to arrive at the new actual cost, a proposed rule containing the new fees will be published for comment.

FY 2005 SERVICE FEE TABLE

Service	Proposed fee	30 CFR citation
(1) Record Title/Operating Rights (Transfer)	\$160	§ 256.64
(2) Non-required Document Filing	170	§ 256.64

12. In § 256.64, paragraph (a)(8) is revised to read as follows:

§ 256.64 How to file transfers.

* * * * *

(a) * * *

(8) You must pay the service fee listed in § 256.63 of this subpart with your application for approval of any instrument of transfer you are required to file (Record Title/Operating Rights (Transfer) Fee). Where multiple transfers of interest are included in a single instrument, a separate fee applies to each individual transfer of interest. For any document you are not required to file by these regulations but which you submit for record purposes per lease affected, you must also pay the service fee listed in § 256.63 (Non-required Document Filing Fee). Such documents may be rejected at the discretion of the authorized officer.

* * * * *

[FR Doc. 05-4999 Filed 3-14-05; 8:45 am]

BILLING CODE 4310-MR-P

LIBRARY OF CONGRESS

COPYRIGHT OFFICE

37 CFR Part 270

[Docket No. RM 2005-2]

Reports of Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing amendments to the rules governing reports of use of sound recordings under the statutory license for preexisting subscription services.

DATES: Comments are due no later than April 14, 2005.

ADDRESSES: If hand delivered by a private party, an original and ten copies of any comment should be brought to Room LM-401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If sent by mail

(including overnight delivery using U.S. Postal Service Express Mail), an original and ten copies of any comment should be addressed to: Copyright Arbitration Royalty Panel (CARP) P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or William J. Roberts, Jr. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: Digital audio services provide copyrighted sound recordings of music for the listening enjoyment of the users of those services. In order to provide these sound recordings, however, a digital audio service must license the copyrights to each musical work, as well as the sound recording of the musical work. There are two statutory licenses in the Copyright Act that enable a digital audio service to transmit performances of copyrighted sound recordings: section 112 and section 114. 17 U.S.C. 112 & 114. Congress initially established these licenses in the Digital Performance Right in Sound Recordings Act of 1995, Pub. L. 104-39, for subscription digital audio services then in existence, and later amended sections 112 and 114 in the Digital Millennium Copyright Act of 1998, Pub. L. 105-304, to include other types of digital audio services. It is the former category of services (hereinafter referred to as "preexisting subscription services") to which this Notice of Proposed Rulemaking ("NPRM") applies.

On June 24, 1998, the Copyright Office published interim regulations establishing the requirements by which copyright owners receive reasonable notice of the use of their works from preexisting subscription services, and how reports of use shall be kept and made available to copyright owners. Originally codified at §§ 201.35 through 201.37 of title 37 of the Code of Federal Regulations, these regulations have recently been moved to part 270 of the CFR, but have remained unchanged. On March 18, 2003, the preexisting subscription services—Music Choice, DMX Music Inc., and Muzak LLC—and representative organizations of copyright owners of sound recordings—SoundExchange, Inc., the American Federation of Television and Radio Artists, and the American Federation of Musicians—filed a petition with the Copyright Office seeking to amend the regulations regarding reports of use

(formerly § 201.36, now § 270.2) for preexisting subscription services. At that time, the Office was conducting a rulemaking proceeding to establish notice and recordkeeping requirements for digital audio services other than preexisting subscription services and declined to include the petition in that proceeding. See 69 FR 11515, 11517 n.9 (March 11, 2004). Instead, the Office determined to address the petition "in a separate **Federal Register** document."

Id. Today's NPRM fulfills that directive. Petitioners request what they describe as "minor adjustments [that] will make the rules more useful to copyright owners and performers and less burdensome on users of copyrighted works." Petition at 1. The proposed changes can be generally described as follows. First, to provide copyright owners with a more complete report of the use of their works, petitioners request that preexisting subscription services report the copyright notice (i.e., the "P line") accompanying record albums or sound recordings, where it is available. Second, petitioners propose to extend the time allowed for filing reports of use to comply with current payment periods for preexisting subscription services. See 68 FR 39837 (July 3, 2003). And third, petitioners propose some technical amendments that, in their view, clarify that the requirements of § 270.2 apply only to preexisting subscription services.

The Office welcomes public comment to the proposed changes.

List of Subjects in Part 270

Copyright, Sound Recordings.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 270 of 37 CFR to read as follows:

PART 270—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

1. The authority citation for part 270 continues to read as follows:

Authority: 17 U.S.C. 702

2. Section 270.2 is amended as follows:

- a. By revising paragraph (b)(2);
- b. By revising paragraph (b)(3);
- c. In paragraph (c), by adding "or pursuant to a settlement agreement reached or statutory license adopted pursuant to section 112(e)" after "17 U.S.C. 802(f)" and by removing "twentieth" and adding "forty-fifth" in its place;
- d. In paragraph (d) introductory text, by removing "20th" and adding "forty-fifth" in its place; and
- e. By revising paragraph (e).