

Section 15(a) of the Act simply requires the Commission to “consider the costs and benefits” of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the proposed Amendment, in light of the specific considerations identified in Section 15(a) of the Act, as follows:

#### 1. Protection of Market Participants and the Public

In the event of the bankruptcy of a commodity broker, the proposed Amendment would benefit the customers of such commodity broker, by providing them with the opportunity, under certain circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

#### 2. Efficiency and Competition

The proposed Amendment is not expected to have an effect on efficiency or competition.

#### 3. Financial Integrity of Futures Markets and Price Discovery

As mentioned above, the proposed Amendment will promote financial integrity of the futures markets by providing customers of a commodity broker in bankruptcy with the opportunity, under certain circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

#### 4. Sound Risk Management Practices

The proposed Amendment is not expected to have a direct effect on the risk management practices of commodity brokers.

#### 5. Other Public Considerations

Recent events, such as the Refco and Lehman proceedings, have demonstrated that the proposed Amendment is necessary and prudent.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

#### List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity futures.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

#### PART 190—BANKRUPTCY

1. The authority citation for Part 190 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

2. Add new paragraph (d)(3) to § 190.04 to read as follows:

#### § 190.04 Operation of the debtor’s estate—general.

\* \* \* \* \*

(d) \* \* \*

(3) *Exception to liquidation only.*

Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

\* \* \* \* \*

Issued in Washington, DC, on December 9, 2009 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–29730 Filed 12–15–09; 8:45 am]

**BILLING CODE P**

#### LIBRARY OF CONGRESS

#### Copyright Royalty Board

#### 37 CFR Part 382

[Docket No. 2006–1 CRB DSTRA]

#### Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates for the satellite digital audio radio services’ use of the ephemeral recordings statutory license under the Copyright Act for the period 2007 through 2012.

**DATES:** Comments and objections, if any, are due no later than January 15, 2010.

**ADDRESSES:** Comments and objections may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–0600, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–0600.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at [crb@loc.gov](mailto:crb@loc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

On January 24, 2008, the Copyright Royalty Judges published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2007 through 2012 for satellite digital audio radio services (“SDARS”). 73 FR 4080. In *SoundExchange, Inc. v. Librarian of Congress*, 571 F.3d 1220, 1226 (DC Cir. 2009), the U.S. Court of Appeals for the DC Circuit affirmed the Judges’ determination in all but one respect, remanding to the Copyright Royalty Judges the single matter of specifying a royalty for the use of the ephemeral recordings statutory license under Section 112(e) of the Copyright Act. By order dated October 22, 2009, the Copyright Royalty Judges established a period commencing on November 2, 2009, and concluding on December 2, 2009, for Sound Exchange, Inc. and Sirius XM Radio Inc. (collectively, the “Parties”) to negotiate and submit a settlement of the ephemeral royalty rate

issue that was the subject of the remand. With the Parties having reached such a settlement, the Copyright Royalty Judges now publish for comment the proposed change in the rule that is necessary to implement that settlement pursuant to order of remand from the U.S. Court of Appeals for the DC Circuit.

In the Settlement, the Parties have agreed to proposed changes in the regulations at 37 CFR 382.12 that do not disturb the combined Section 112(e)/114 royalty previously set by the Copyright Royalty Judges, but do specify that five percent of the combined royalty will be considered the Section 112(e) royalty, while the balance of the royalty is attributable to the Section 114 license.

#### List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

#### Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 382 of title 37 of the Code of Federal Regulations as follows:

#### **PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES**

1. The authority citation for part 382 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 114, and 801(b)(1).

2. Section 382.12 is revised to read as follows:

#### **§ 382.12 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.**

(a) *In general.* The monthly royalty fee to be paid by a Licensee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be the percentage of monthly Gross Revenues resulting from Residential services in the United States as follows: for 2007 and 2008, 6.0%; for 2009, 6.5%; for 2010, 7.0%; for 2011, 7.5%; and for 2012, 8.0%.

(b) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions during the Term for

which it pays royalties as and when provided in this subpart shall be included within, and constitute 5% of, such royalty payments.

Dated: December 11, 2009.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. E9-29904 Filed 12-15-09; 8:45 am]

**BILLING CODE 1410-72-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Part 67**

**[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1083]**

#### **Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before March 16, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1083, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.