

selection was also necessarily erroneous. Letter from Paul M. Fakler to Office of the General Counsel at 12 (Mar. 22, 2013). Music Choice observed that “[i]n taking this approach, the Judges departed from longstanding precedent, in which a range of reasonable rates is established and then a rate is selected from within that range by balancing the four policy objectives \* \* \*.” *Id.* (citing Librarian’s PSS Determination, 63 FR 25394, 25405–06, May 8, 1998).

In similar fashion, SoundExchange argued that applying the statutory factors to the “incorrect starting point” of the 7.5% rate established in PSS SDARS I was “utterly meaningless.” Letter from Michael B. DeSanctis to Office of the General Counsel at 5 (Mar. 25, 2013). As expressed by SoundExchange: “Simply put, it is a clearly erroneous application of the section 801(b)(1) factors to apply them as adjustments to a rate that is not a marketplace rate and that is wholly unsupported by the record evidence.” *Id.*<sup>9</sup>

#### Review of Copyright Royalty Judges’ Determination

Section 801(b)(1) provides that the rates adopted by the CRJs “shall be calculated to achieve” the four statutory objectives. Under a plain reading of the statutory provision, the rates selected by the CRJs must be determined to satisfy each of the four criteria in order to fulfill the statutory purpose.

As interpreted by the Court of Appeals for the District of Columbia Circuit, “the natural reading of the language of section 801(b)(1) is that the royalty rate is to be ‘calculated to achieve the following objectives’ in the sense of being designed or adapted for the achievement of those objectives \* \* \*.” *Recording Indus. Ass’n v. Copyright Royalty Tribunal*, 662 F.2d 1, 8 n.19 (D.C. Cir. 1981). That court has further explained that “[t]he statutory factors pull in opposing directions, and reconciliation of these objectives is committed to the Tribunal [now CRB] as part of its mandate to determine ‘reasonable’ royalty rates.” *Id.* at 9; see also *Recording Indus. Ass’n v. Librarian of Congress*, 608 F.3d at 864 (“When establishing terms and rates \* \* \* the Copyright Act requires the Board to balance four general and sometimes conflicting policy objectives.”);

*Recording Indus. Ass’n v. Librarian of Congress*, 176 F.3d 528, 533 (D.C. Cir. 1999) (“[R]easonable rates’ are those that are calculated with reference to the four statutory criteria.”).

Accordingly, in prior rate proceedings governed by section 801(b)(1), the CRJs (and their predecessor ratesetting bodies, the Copyright Royalty Tribunal and the copyright arbitration royalty panels) have assessed potentially applicable rates including the ultimately selected rates under each of the four statutory factors to ensure that the chosen rates would achieve the four policy objectives. See, e.g., Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 73 FR 4094–4098, Jan. 24, 2008; Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings, 63 FR 25405–09, May 8, 1998; Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords 46 FR 10466, 10479–81, Feb. 3, 1981; Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 889, Jan. 5, 1981.

In this case the CRJs did not do this.<sup>10</sup> Rather, in the instant proceeding, the existing statutory rate of 7.5% for PSS was found by the CRJs to meet the factors set forth in § 801(b)(1)(A), (C) and (D), with no adjustment warranted. But the CRJs also determined that the 7.5% rate should be adjusted upward for the period in question (initially to 8.0% and later to 8.5%) in light of the fair return/fair income factor set forth in section 801(b)(1)(B). Thus, the CRJs did not consider the ultimately selected rates of 8.0% and 8.5% against the policy goals of section 801(b)(1)(A), (C) or (D), or determine that the chosen rates in fact fulfill these three policy objectives.

Proper consideration of the four statutory criteria set forth in section 801(b)(1) lies at the heart of the process for establishing reasonable rates

according to Congress’ design. The Register therefore concludes that the CRJs’ misinterpretation of section 801(b)(1), and consequent failure to evaluate the actual rates chosen for PSS under each of the section 801(b)(1) factors, constitutes a material error of substantive law.

#### CRJs’ Continuing Jurisdiction

The Register notes that the CRJs enjoy continuing jurisdiction to amend their final determination. Under section 803(c)(4), “The Copyright Royalty Judges may issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the **Federal Register**.” The Register encourages the CRJs to consider whether the error identified herein is amenable to correction pursuant to their continuing jurisdiction.

#### Conclusion

Having reviewed the resolution by the Copyright Royalty Judges for legal error, the Register of Copyrights hereby concludes that the rates set for royalty payments for the use of sound recordings in transmissions made by PSS must be found to satisfy all of the section 801(b)(1) factors. The CRJs’ failure to determine that the selected rates fulfill each of the four statutory objectives constitutes legal error. This decision shall be binding as precedent upon the CRJs.

Dated: April 9, 2013.

**Maria A Pallante,**  
*Register of Copyrights.*

[FR Doc. 2013–09005 Filed 4–16–13; 8:45 am]

**BILLING CODE 1410–30–P**

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## MARINE MAMMAL COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Tuesday, 7 May 2013, from 10:30 a.m. to 5:45 p.m.; Wednesday, 8 May 2013, from 8:30 a.m. to 5:30 p.m.; Thursday, 9 May 2013, from 8:30 a.m. to 5:00 p.m. The Commission and the Committee also will meet in executive

<sup>9</sup> Although in their comments the responding parties expressed significant concern about the CRJs’ selection of the PSS statutory rate generated by PSS SDARS I as the relevant benchmark for PSS SDARS II, the Register does not mean to suggest any view on this aspect of the proceeding, or on the merits of the rates ultimately selected by the CRJs.

<sup>10</sup> Under the statutory framework, the CRJs are required to “act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)) \* \* \* and decisions of the court of appeals \* \* \*.” 17 U.S.C. 803(a)(1).

session on Tuesday, 7 May 2013, from 8:30 to 10:00 a.m.

**PLACE:** The Pacific Room, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037; (858) 546-7000.

**STATUS:** The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be limited to discussions of internal agency practices, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on issues related to the Pacific Coast. Although subject to change, issues that the Commission plans to consider at the meeting include marine mammal-fishery interactions, disturbance of marine mammals from sound, growing pinniped populations on the West Coast, vessel strikes of large whales, and the status and conservation of southern resident killer whales, North Pacific right whales, North Pacific humpback whales, beaked whales, southern sea otters, and gray whales. In addition, the Commission plans to consider several international conservation issues including the International Whaling Commission, the vaquita, Antarctic management and the Southern Ocean Research Program, the International Union for Conservation of Nature, the Mekong River dolphin, southern right whale, Southeast Asia marine mammals, and the eastern tropical Pacific Ocean and effects of the tuna fishery on dolphin stocks. The Commission also will review issues related to conducting marine mammal surveys and other scientific studies under declining budgets.

**CONTACT PERSON FOR MORE INFORMATION:** Mark D. Richardson, Special Assistant to the Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504-0087; email: [mrichardson@mmc.gov](mailto:mrichardson@mmc.gov).

Dated: April 15, 2013.

**Timothy J. Ragen,**  
Executive Director.

[FR Doc. 2013-09167 Filed 4-15-13; 4:15 pm]

**BILLING CODE 6820-31-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

**TIME AND DATE:** 10:00 a.m., Thursday, April 18, 2013.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314-3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 1. Quarterly Insurance Fund Report.

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703-518-6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. 2013-09125 Filed 4-15-13; 11:15 am]

**BILLING CODE 7535-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Establish an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

**DATES:** Written comments on this notice must be received by June 17, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**FOR ADDITIONAL INFORMATION OR COMMENTS:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Grantee Reporting Requirements for National user facilities managed by the NSF Division of Materials Research.

*OMB Number:* 3145-NEW.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to establish an information collection.

### Overview of This Information Collection

The NSF Division of Materials Research (DMR) supports a number of National user facilities that provide specialized capabilities and instrumentation to the scientific community on a competitive proposal basis. In addition to the user program, these facilities support in-house research, development of new instrumentation or techniques, education, and knowledge transfer.

The facilities integrate research and education for students and post-docs involved in experiments, and support extensive K-12 outreach to foster an interest in Science Technology Engineering and Mathematics (STEM) and STEM careers. Facilities capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

National User Facilities will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. User facilities will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting (RPPR) module in Research.gov. These indicators are both quantitative and descriptive and may include, for example, lists of successful proposal and users, the characteristics of facility personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students supported through the facility or users of the facility; descriptions of significant advances and other outcomes of this investment. Such reporting requirements are included in the cooperative agreement which is binding between the academic institution and the NSF.

Each facility's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships,