not become NRTLs because they were owned by a manufacturer. In a recent case, a laboratory applied but stopped the application process after it better understood OSHA's concerns over its relationship with its owner-manufacturer, a manufacturer of computer and telecommunications hardware products. OSHA has applied its policy fairly and its determinations regarding ETI's independence are consistent with the Agency's previous positions.

ETI also argues in its rebuttal statement that a draft fax it received from OSHA staff constituted an ''interpretation'' of the independence requirement that is at odds with OSHA's current interpretation. In December 2001, OSHA staff sent a draft fax to ETI that detailed some preliminary findings and conclusions about ETI's lack of independence. These preliminary findings in many ways mirrored OSHA's other correspondence with ETI. It expressed concerns about the vast nature of Emerson's operations, the Board of Directors of ETI, and the fact that neither ETI nor OSHA could effectively monitor the corporate no-testing policy (*see* Exhibit 17–11). It also listed some conditions that ETI could consider as it was evaluating the independence criteria and its relationship with Emerson.

The draft fax is not a statement of Agency policy (*Miller* v. *Youakim,* 440 U.S. 125, 146 n.25 (1979)). It was intended as a discussion piece between OSHA and ETI. It is not signed by an Agency official and is clearly marked draft on each page. ETI knew at the time that the document was simply a draft that was sent out to solicit comment from ETI. This is supported by the fact that ETI made no attempts to implement any of the suggestions included in the draft. In fact, ETI never formally responded to the draft.

OSHA's official statements regarding ETI's ownership situation have been entirely consistent. Starting with the first correspondence related to the independence issue, OSHA has consistently stated that ETI was not independent because it was wholly owned by Emerson:

<bullet≤ See Exhibit 16–5: ''Under our policy on independence, Emerson would be a 'supplier' of products that must be certified by an NRTL. As described in our policy, since Emerson owns ETI and two of its officers are Directors of ETI, ETI would fail to meet the requirement for complete independence of an NRTL, under paragraph (b)(3) of 29 CFR 1910.7.''

<bullet≤ See Exhibit 16–6: ''After consulting with attorneys in the Department of Labor's Office of the Solicitor, we believe that the information in your May 17 letter does in fact confirm that ETI does not meet our independence requirement.''

<bullet≤ See Exhibit 16–8: ''The independence requirement in § 1910.7 is intended to prevent relationships that could unduly influence and thereby compromise the NRTL's testing and certification process. OSHA considers an NRTL not to be independent if it is owned by a manufacturer of the type of products for which OSHA requires certification by NRTLs.''

<bullet≤ See Exhibit 16–9: ''The fundamental reason for denial is ETI's ownership by Emerson Electrical Corporation (Emerson), a manufacturer of a wide variety of equipment that OSHA requires to be approved (i.e., tested and certified) by NRTLs. As such, this violates the NRTL requirement for independence set forth under 29 CFR 1910.7(b).''

As these statements demonstrate, OSHA has consistently informed ETI that its ownership by Emerson violated the independence requirement. OSHA has provided ETI several opportunities to rebut the presumption of pressures. ETI simply has not met its burden of demonstrating by clear and convincing evidence that pressures do not and will not exist that could compromise the results of its testing and certification processes.

Request for Renewal of Recognition

ETI seeks renewal of its recognition for the site that OSHA has previously recognized. ETI also seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the following two test standards, which OSHA has previously recognized for ETI. Each of these standards is an ''appropriate test standard,'' within the meaning of 29 CFR 1910.7(c): UL 508 Industrial Control Equipment; UL 508C Power Conversion Equipment. The designations and titles of these test standards were current at the time of the preparation of this notice.

Preliminary Finding

Following a review of the application file and other pertinent information, and for the reasons summarized above, OSHA has determined that ETI has not met all the requirements for renewal of its recognition. OSHA staff, therefore, recommended to the Assistant Secretary that the application be denied.

The Assistant Secretary has made a preliminary finding that ETI fails to meet all the requirements prescribed by 29 CFR 1910.7 for the renewal of its recognition, and, therefore, OSHA proposes to deny renewal of that recognition. This preliminary negative finding does not constitute OSHA's final decision on the application for renewal.

As stated above, OSHA welcomes public comments, in sufficient detail, as to whether ETI has met the requirements of 29 CFR 1910.7 for the renewal of its recognition as a NRTL. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of the ETI request, the on-site review report, ETI's statement of reasons, other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL2–94 contains all materials in the record concerning the ETI application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the ETI renewal request. The Assistant Secretary will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 23rd day of April, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–8455 Filed 5–2–07; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2007–4]

Notice of Intent to Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing

receipt of a notice of intent to audit 2005 statements of account concerning the eligible nonsubscription transmissions of sound recordings made by Microsoft Corporation (''Microsoft'') under statutory licenses.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Acting General Counsel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of ''eligible nonsubscription transmissions.''[1] 17 U.S.C. 114. A music service that operates under the section 114 statutory license may also make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel (''CARP'')—the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA'''), Pub. L. No. 108–419, 118 Stat. 2341 (2004). *See* 69 FR 5695 (February 6, 2004).

This Act, which the President signed into law on November 30, 2004, and which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges (''CRJs''). Consequently, the CRJs carry out the functions heretofore performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, section 6(b)(3) of the Act states in pertinent part:

> [t]he rates and terms in effect under section 114(f)(2) or 112(e) . . . on December 30, 2004, for new subscription services [and] eligible nonsubscription services . . . shall remain in effect until the later of the first applicable effective date for successor terms and rates . . . or such later date as the parties may agree or the Copyright Royalty Judges may establish.

Successor rates and terms for the licenses are scheduled to be published in the **Federal Register** on Tuesday, May 1, 2007. However, these successor rates and terms carry an effective date beginning on January 1, 2006. Accordingly, the terms of the section 114 and 112 licenses as previously constituted are still in effect for any request to audit 2005 statements of account.

One of the previously constituted terms, set forth in § 262.6 of title 37 of the Code of Federal Regulations, states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On December 23, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit Microsoft for the years 2002, 2003, and 2004. *See* 72 FR 624 (January 5, 2006). Subsequently, on March 29, 2007, SoundExchange filed a second notice of intent to audit Microsoft,[2] pursuant to § 262.6(c), notifying the Copyright Office of its intent to expand its current audit to cover 2005. This notice of intent to audit was received by the Copyright Office on April 2, 2007. Section 262.6(c) requires the Copyright Office to publish a notice in the Federal Register within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit.

In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to the notice of intent to audit filed by SoundExchange on March 29, 2007.

Dated: April 30, 2007

Tanya M. Sandros,

Acting General Counsel.

[FR Doc. E7–8515 Filed 5–2–07; 8:45 am]

BILLING CODE 1410–30–S

[1] An ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

[2] A copy of the new Notice of Intent to Audit Microsoft is posted on the Copyright Office Web site at http://www.copyright.gov/carp/microsoft–notice2.pdf

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–033)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Explorer Schools (NES) seeks a clearance to collect data from educators to determine eligibility and selection of schools to participate in their three year project. To lessen the impact on educators who will complete the project application, the application period must be open during the times when they are less likely to be needed in the classroom (*e.g.*, summer break) and can obtain any required school board approvals.

II. Method of Collection

NASA will utilize a Web-base on-line form to collect this information.