

Noncommercial Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. 501 and fully subject to the remedies provided by 17 U.S.C. 502–506 and 509.

#### 9. Definitions

As used in these Rates and Terms, the following terms shall have the following meanings:

(a) The term “*Aggregate Tuning Hours*” means the total hours of programming that a Noncommercial Webcaster has transmitted during the relevant period to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions, less the actual running time of any sound recordings for which the Noncommercial Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Webcaster transmitted 1 hour of programming to 10 simultaneous listeners, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Webcaster's Aggregate Tuning Hours would equal 10.

(b) A “*Broadcaster Simulcast*” is a simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, where such Internet transmission or retransmission is made by a Noncommercial Webcaster that owns or operates the over-the-air radio station making the AM or FM broadcast.

(c) An “*Incidental Performance*” is a Performance that both:

(1) makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk, sports and business programming, brief background performances during disk jockey announcements, brief performances during commercials of 60 seconds or less in duration, or brief performances during sporting or other public events; and

(2) other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than 30 seconds (as a sound recording used as a theme song is featured).

(d) An “*NEE*” or “*Noncommercial Educational Entity*” is a Noncommercial Webcaster that is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, but that is not a “public broadcasting entity” (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

(e) The term “*Noncommercial Webcaster*” shall have the meaning given in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(f) A “*Performance*” is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission or retransmission (e.g., the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) a performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) a performance of a sound recording for which the Noncommercial Webcaster has previously obtained a license from the copyright owner of such sound recording; and

(3) an Incidental Performance.

[FR Doc. 03–14791 Filed 6–10–03; 8:45 am]

BILLING CODE 1410–33–P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35334]

### Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 29–30560–01, Linguagen, Corp., Paramus, NJ

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Linguagen Corp. for Materials License No. 29–30560–01, to authorize release of its facility in Paramus, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

#### II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Paramus, New Jersey facility for unrestricted use. Linguagen Corp. has

been authorized by NRC since April 13, 2002 to use radioactive materials for research and development purposes at the site. On January 3, 2003, Linguagen Corp. requested that NRC release the facility for unrestricted use. Linguagen Corp. has conducted surveys of the facility as required by 10 CFR part 20 and has determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20.

#### III. Finding of No Significant Impact

The NRC staff has evaluated Linguagen Corp.'s request and the results of the surveys and has concluded that the completed action complies with Subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

#### IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Nos. ML031550264, ML030080404, ML030430589, ML030650126, ML030690328 and ML030630684). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 4th day of June, 2003.

For the Nuclear Regulatory Commission.

**John D. Kinneman,**

*Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.*

[FR Doc. 03–14682 Filed 6–10–03; 8:45 am]

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