Four letters were received in response to the supplemental notice of proposed rulemaking. One letter from the Mayor of the City of Biloxi, expressed support for the proposed rule. Two letters from towing companies expressed opposition to the proposal, stating that the times during which the bridge would be closed to navigation would severely hamper coal deliveries to the Mississippi Power Company electric power plant, during peak load periods. A letter from the Mississippi Power Company also stated that the restricted openings of the bridge would hinder deliveries of coal to the electric power plant during peak load periods. Also in that letter, Mississippi Power Company requested a meeting for all interested parties to discuss alternatives to the proposal and to seek a compromise. In response to this request, the Harrison County Board of Supervisors contacted each party who responded to the supplementary notice of proposed rulemaking and arranged a meeting on December 10, 1998 at the Harrison County Board of Supervisors Building in Biloxi, Mississippi. The towing companies and the Mississippi Power Company agreed that deleting the proposed mid-day closure of 11:30 a.m. to 1:30 p.m. Mondays through Fridays except Federal holidays would cause fewer concerns about coal deliveries.

The Coast Guard agrees that the change to the proposed rule will be less disruptive to coal deliveries to the power plant and that the two remaining closure periods in the morning and afternoon will provide relief for vehicular traffic during rush hours. This change is being published as an interim rule to make the changed schedule effective and to allow the public to comment on the schedule before the Coast Guard issues its final rule. The Coast Guard will consider all comments received and may revise this rule before making it final.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the proposed closed-to-navigation periods is minimal. Commercial fishing vessels and tugs with tows still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods as is their customary practice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

This rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will still have the ability to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Additionally, there is no indication that other waterway users would suffer and type of economic hardship if they are precluded from transiting the waterway during the hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this final rule will have a significant impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this final rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Add § 117.675(c) to read as follows:

§ 117.675 Back Bay of Biloxi.

* * * * *

(c) The draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: January 26, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–3132 Filed 2–8–99; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations setting the rate for the delivery of digital phonorecords in general and deferring until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution

is incidental to the transmission which constitutes a digital phonorecord delivery.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (''CARP''), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (''Digital Performance Act''). Pub. L. 104–39, 109 Stat. 336. Among other things, the Act confirms and clarifies that the scope of the statutory license to make and distribute phonorecords of nondramatic musical compositions, 17 U.S.C. 115, includes the right to distribute or authorize distribution by means of a digital transmission which constitutes a ''digital phonorecord delivery.'' 17 U.S.C. 115(c)(3)(A).

A ''digital phonorecord delivery'' is defined as ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording * * *.'' 17 U.S.C. 115(d).

The Digital Performance Act established that the rate for all digital phonorecord deliveries (''DPDs'') made or authorized under a compulsory license on or before December 31, 1997, was the same as the rate in effect for the making and distribution of physical phonorecords for that period. 17 U.S.C. 115(c)(3)(A)(i). For digital phonorecord deliveries made or authorized after December 31, 1997, the Digital Performance Act established a two-step process for determining the terms and rates; either the copyright owners of nondramatic musical works and those persons entitled to obtain a license may negotiate the rates and terms for the statutory license, or they may participate in a Copyright Arbitration Royalty Panel (''CARP'') proceeding. 17 U.S.C. 115(c)(3)(A)–(D). In a CARP proceeding, the parties present evidence to a panel of three arbitrators who, based upon the written record, write a report for the Librarian of Congress in which the CARP sets out its determination concerning the appropriate rates and terms. 17 U.S.C. 802(c) and (e).

The Librarian initiated the voluntary negotiation period for this rate setting proceeding on July 17, 1996, and directed it to end on December 31, 1996. 61 FR 37213 (July 17, 1996). At the same time, the Librarian announced a schedule for a CARP proceeding in case the interested parties were unable to reach an industry-wide agreement through the negotiation process. The Librarian vacated this schedule and a second schedule for a CARP proceeding at the request of the negotiating parties, Recording Industry Association of America (''RIAA''), the National Music Publishers' Association, Inc. (''NMPA''), and The Harry Fox Agency, Inc. (''Harry Fox''). 61 FR 65243 (December 11, 1996); 62 FR 5057 (February 3, 1997).

Ultimately, these parties reached a voluntary agreement which they submitted to the Librarian of Congress on November 5, 1997, pursuant to 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt rates and terms embodied in a proposed settlement without convening an arbitration panel, if after conducting a notice-and-comment proceeding, no party with an intent to participate in a CARP proceeding files a substantive comment opposing the proposed regulations. *See* e.g., 62 FR 63502 (December 1, 1997) (proposing regulations setting rates and terms for the section 118 license). Accordingly, the Librarian published the proposed rates and terms for digital phonorecord deliveries for public comment. 62 FR 63506 (December 1, 1997).

Three parties filed comments in response to the proposed terms and rates: the United States Telephone Association (''USTA''), the Coalition of Internet Webcasters (''Webcasters''), and Broadcast Music, Inc. (''BMI''). These comments served to identify heretofore unknown parties who have a significant interest in the setting of the rates and terms for the delivery of digital phonorecord deliveries. Consequently, the parties entered a new round of negotiations in an attempt to resolve the commenters' concerns and reach a mutually acceptable industry-wide agreement.

During the second phase of negotiations, the NMPA, SGA, and RIAA submitted a memorandum to the Copyright Office requesting that it adopt the unopposed rate for the delivery of digital phonorecords in general and the schedule for future rate adjustment proceedings set forth in its November 5, 1997, agreement, and that it either adopt the proposed rates and terms for incidental digital phonorecord deliveries set forth in the proposed regulations or sever and defer further consideration of these rates and terms until the next rate adjustment proceeding. The Copyright Office then offered the parties who had filed a Notice of Intent to Participate an opportunity to comment on the memorandum. *See* Order, Docket No. 96–4 CARP DPRA (October 16, 1998).

USTA responded that its concerns were fully addressed by the memorandum; and the three performing rights organizations, ASCAP, BMI, and SESAC, filed a joint comment which generally supported the recommendations outlined in the NMPA/SGA/RIAA memorandum, provided that the final regulations included a provision recognizing that the section 115 license does not affect in any way the public performance rights granted under 17 U.S.C. 106(4). Similarly, the Webcasters filed comments which supported the adoption of the rate and terms for digital phonorecord deliveries in general and the suggestion to sever and defer further consideration of rates and terms for incidental DPDs until the next rate adjustment proceeding with two modifications. First, the Webcasters sought an amendment to the proposed rules that would allow a party to petition the Copyright Office for a proceeding to set a rate for the transmission of an incidental digital phonorecord delivery prior to the next scheduled date. Second, the Webcasters requested that no rate be set for the incidental DPDs prior to the completion of a study required by Congress under section 104 of the Digital Millennium Copyright Act of 1998 (''DMCA''), subject to the right to petition for an interim rate adjustment proceeding.

In reply comments, NMPA/SGA/RIAA agreed to the ASCAP/BMI/SESAC suggestion for a clarification and the Webcasters' suggestion for a right to petition for a rate adjustment proceeding for incidental DPDs during the interim period. However, they did not support the Webcasters' request to postpone the rate adjustment proceeding for incidental DPDs until the Office completes its study on the operation of sections 109 and 117 of the Copyright Act, 17 U.S.C., as effected by Title I of the DMCA.

On December 4, 1998, the NMPA/SGA/RIAA submitted a second joint petition for adjustment of digital phonorecord delivery royalty rates, incorporating the proposed modifications except for the suggestion to postpone the rate adjustment proceeding until the completion of the study. The petition was filed pursuant to 17 U.S.C. 115(c) and 803(a) and 37 CFR 251.63(b). Section 251.63(b) allows the Librarian to adopt the proposed rates and terms at the conclusion of an unopposed notice-and-comment rulemaking proceeding. This being so,

the Copyright Office requested public comment on the proposed rates and terms in a notice published in the **Federal Register**. 63 FR 71249 (December 24, 1998).

The Copyright Office received no comments opposing the rates and terms for the delivery of digital phonorecords set forth in the December 24, 1998, **Federal Register** notice. Therefore, by this notice, the Librarian is adopting and the Copyright Office is announcing final regulations which set the rate for the delivery of digital phonorecords in general and defer until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution is incidental to the transmission which constitutes a digital phonorecord delivery.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Library amends 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

2. Revise § 255.5 to read as follows:

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the ''Physical Rate''). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

3. Add §§ 255.6 through 255.8 to read as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

§ 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

Dated: January 29, 1999.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–3119 Filed 2–8–99; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–011–0071; FRL–6229–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises the definitions in North Coast Unified Air Quality Management District (NCUAQMD) and Northern Sonoma County Air Pollution Control District (NSCAPCD) Rules 130, Definitions. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. This approval action will incorporate these definitions into the Federally approved SIP. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 12, 1999, without further notice, unless EPA receives relevant adverse comments by March 11, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to: Andrew