

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.233 to read as follows:

§ 117.233 Broad Creek.

(a) The draw of the Conrail Bridge, mile 8.0 at Laurel, shall open on signal if at least four hours notice is given.

(b) The draws of the Poplar Street Bridge, mile 8.2, and the U.S. 13A Bridge, mile 8.2, all at Laurel, shall open on signal if at least 48 hours notice is given.

■ 3. Add new § 117.234 to read as follows:

§ 117.234 Cedar Creek.

The SR 36 Bridge, mile 0.5 in Cedar Beach, shall open on signal. From April 1 through November 30 from 2 a.m. to 4 a.m.; and from December 1 through March 31 from 6:30 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given.

■ 4. Revise § 117.243 to read as follows:

§ 117.243 Nanticoke River.

(a) The draw of the Norfolk Southern Railway Bridge, mile 39.4 in Seaford, will operate as follows:

(1) From March 15 through November 15, the draw will open on signal for all vessels except that from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(2) At all times, from November 16 through March 14, the draw will open on signal if at least 2½ hours notice is given.

(3) When notice is required, the owner operator of the vessel must provide the train dispatcher with an estimated time of passage by calling (717) 215–0379 or (609) 412–4338.

(b) The draw of the SR 13 Bridge, mile 39.6 in Seaford, shall open on signal, except from 6 p.m. to 8 a.m., from April 1 through October 31; from November 1 through March 31, Monday to Friday, and on Saturday and Sunday from 3:30 p.m. to 7:30 a.m., if at least four hours notice is given.

Dated: August 25, 2006.

L.L. Hereth,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–14984 Filed 9–8–06; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. RM 2005–1]

Procedural Regulations for the Copyright Royalty Board

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule with request for comments.

SUMMARY: The Copyright Royalty Judges, on behalf of the Copyright Royalty Board, are adopting amendments to the procedural regulations governing the practices and procedures of the Copyright Royalty Judges in royalty rate and distribution proceedings.

DATES: These rules become effective on September 11, 2006.

Written comments should be received no later than November 13, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of comments must be brought to the Copyright Office Public Information Office in the James Madison Memorial Building, Room LM-430, 101 Independence Avenue, SE., Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), an original and five copies of comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559-6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, *etc.*, due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney-Advisor, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707-7658. Telefax (202) 252-3423.

SUPPLEMENTARY INFORMATION: On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004. Public Law 108-419, 118 Stat. 2341. The Act changed the body responsible for adjusting royalty rates and making

royalty distributions under the various statutory licenses of the Copyright Act from the Copyright Arbitration Royalty Panels to the Copyright Royalty Judges. This change, along with others to the royalty rate and distribution process, required adoption of new procedural rules. This task was accomplished by the Interim Chief Copyright Royalty Judge who, pursuant to amended 17 U.S.C. 803(b)(6)(A) published procedural regulations on May 31, 2005. See 70 FR 30901 (May 31, 2005).

As part of the May 31, 2005 publication of regulations, comments from interested parties were sought. Initial comments were received from representatives of the Phase I copyright owner claimant groups that participate in section 111 and section 119 royalty rate and distribution proceedings (collectively, "Copyright Owners"), the Local Radio Internet Coalition, the Intercollegiate Broadcasting System, the Digital Media Association ("DiMA"), and the Alliance of Artists and Recording Companies ("AARC"). Reply comments were received from SoundExchange, Inc., DiMA and the Local Radio Internet Coalition (jointly), Copyright Owners, and AARC.

After considering these submissions, the Copyright Royalty Judges, on behalf of the Copyright Royalty Board, adopt amendments to the procedural rules governing royalty rate and distribution proceedings. Interested parties are encouraged to comment on these amendments by the submission deadline set forth above.

List of Subjects

37 CFR Part 301

Copyright, Organization and functions (government agencies).

37 CFR Part 302

Copyright, Freedom of information, Reporting and recordkeeping requirements.

37 CFR Part 350

Administrative practice and procedure, Copyright, Lawyers.

37 CFR Part 351

Administrative practice and procedure, Copyright.

37 CFR Part 352

Administrative practice and procedure, Copyright.

37 CFR Part 353

Administrative practice and procedure, Copyright.

37 CFR Part 354

Administrative practice and procedure, Copyright.

37 CFR Part 360

Cable television, Claims, Copyright, Recordings, Satellites, Television.

Final Regulations

■ For the reasons set forth in the preamble, Chapter III of Title 37 of the Code of Federal Regulations is amended to read as follows:

PART 301—ORGANIZATION

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 17 U.S.C. 801.

§ 301.2 [Amended]

■ 2. Section 301.2 is amended as follows:

- a. In paragraph (b), by removing "Room LM-401 of the" and adding "the Copyright Office Public Information Office, Room LM-401 in the" in its place and by removing "LM-401," after "Building,"; and
- b. In paragraph (c), by removing "LM-403,".

§ 301.3 [Removed]

- 3. Remove § 301.3.
- 4. Revise part 302 to read as follows:

PART 302—PUBLIC ACCESS TO RECORDS

Sec.

302.1 Public records and access.

302.2 Fees.

Authority: 5 U.S.C. 522.

§ 302.1 Public records and access.

(a) *Inspection.* Records of proceedings before the Board will be available for public inspection at the Copyright Royalty Board offices.

(b) *Requests.* Requests for access to records must be directed to the Copyright Royalty Board. No requests for information or access to records shall be directed to or accepted by a Copyright Royalty Judge. Access to records is only available by appointment.

§ 302.2 Fees.

For services rendered in connection with document location, reproduction, *etc.*, fees shall apply in accordance with § 201.3 of this title.

Subchapter B—Copyright Royalty Judges Rules and Procedures

■ 5. Revise heading of Subchapter B as set forth above.

PART 350—GENERAL ADMINISTRATIVE PROVISIONS

■ 6. The authority citation for part 350 continues to read as follows:

Authority: 17 U.S.C. 803.

§ 350.1 [Amended]

■ 7. Section 350.1 is amended by removing “Board” and adding “Judges” in its place.

■ 8. Revise § 350.2 to read as follows:

§ 350.2 Representation.

Individual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney. Cf. Rule 49(c)(11) of the Rules of the District of Columbia Court of Appeals. The appearance of an attorney on behalf of any party constitutes a representation that the attorney is a member of the bar, in one or more states, in good standing.

§ 350.3 [Amended]

■ 9. Section 350.3 is amended by removing “Board” and adding “Judges” in its place.

■ 10. Section 350.4 is amended as follows:

- a. By revising paragraph (a);
- b. In paragraph (b), by removing “Board” and adding “the Copyright Royalty Judges” in its place;
- c. By revising paragraph (e)(1);
- d. In paragraph (e)(2), by removing “address and telephone number.” and adding “full name, mailing address, e-mail address (if any), telephone number, and facsimile number (if any).” in its place;
- e. By removing paragraph (e)(3);
- f. In paragraph (f), by removing “seven” and adding “five” in its place and by removing “five” and adding “four” in its place; and
- g. In paragraph (g), by removing “Board will compile” and adding “Judges will compile” in its place, by removing “by the Board,” and adding “by the Copyright Royalty Judges,” in its place, and by removing “notify the Board” and adding “notify the Copyright Royalty Judges” in its place.

The revisions to § 350.4 read as follows:

§ 350.4 Filing and service.

(a) *Filing of pleadings.* For all filings, the submitting party shall deliver an original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette to the Copyright Royalty Board

in accordance with the provisions set forth in § 301.2 of this chapter. In no case shall a party tender any document by facsimile transmission, except with the prior express authorization of the Copyright Royalty Judges.

* * * * *

(e) *Subscription*—(1) *Parties represented by counsel.* The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney’s full name, mailing address, e-mail address (if any), telephone number, facsimile number (if any), and a state bar identification number. Submissions signed by an attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (i) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (ii) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (iv) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

* * * * *

■ 11. Section 350.5 is amended as follows:

- a. In paragraph (a) introductory text, by removing “Board” and adding “Judges” in its place and by removing “Board’s” and adding “Copyright Royalty Judges” in its place;
- b. In paragraph (a)(3), by adding “Copyright Royalty” before “Board’s”;
- c. In paragraph (a)(4), by adding “the date designated for the observance of” after “means”;
- d. By revising the introductory text of paragraph (b);
- e. By revising paragraph (b)(4);
- f. In paragraph (b)(5), by removing “sought.” and adding “sought; and” in its place; and
- g. By adding a new paragraph (b)(6).

The additions and revisions to § 350.5 read as follows:

§ 350.5 Time.

* * * * *

(b) *Extensions.* A party seeking an extension must do so by written motion. Prior to filing such a motion, a party must attempt to obtain consent from the other parties to the proceeding. An extension motion must state:

* * * * *

(4) The reason or reasons why there is good cause for the delay;

* * * * *

(6) The attempts that have been made to obtain consent from the other parties to the proceeding and the position of the other parties on the motion.

§ 350.6 [Amended]

■ 12. Section 350.6 is amended by removing “Board” and adding “Judges” in its place.

PART 351—PROCEEDINGS

■ 13. The authority citation for part 351 continues to read as follows:

Authority: 17 U.S.C. 803, 805.

§ 351.1 [Amended]

■ 14. Section 351.1 is amended as follows:

- a. In paragraph (a), by removing “Board” and adding “Judges” in its place;
- b. In paragraph (b)(1)(i)(A), by adding “and” after “(if any);”;
- c. In paragraph (b)(1)(i)(B), by removing “proceeding; and” and adding “proceeding.” in its place;
- d. By removing paragraph (b)(1)(i)(C);
- e. In paragraph (b)(1)(ii)(C), by adding “and” after “proceeding;”
- f. By removing paragraph (b)(1)(ii)(D);
- g. By redesignating paragraph (b)(1)(ii)(E) as paragraph (b)(1)(ii)(D);
- h. In paragraph (b)(2)(i)(B), by adding “and” after “both;”;
- i. In paragraph (b)(2)(i)(C), by removing “proceeding; and” and adding “proceeding.” in its place;
- j. By removing paragraph (b)(2)(i)(D);
- k. In paragraph (b)(2)(ii)(D), by adding “and” after “proceeding;”;
- l. By removing paragraph (b)(2)(ii)(E);
- m. By redesignating paragraph (b)(2)(ii)(F) as paragraph (b)(2)(ii)(E);
- n. In paragraph (b)(4), by removing “less than \$10,000,” and adding “\$10,000 or less,” in its place and by removing “Board” and adding “Copyright Royalty Judges” in its place;
- o. In paragraph (c), by removing “Board unless” and adding “Judges unless” in its place, by removing “Board has determined that” and adding “Copyright Royalty Judges determine”, and by removing “that the petition” and adding “the petition” in its place; and
- p. In paragraph (d), by removing “Board” and adding “Judges” in its place.

§ 351.2 [Amended]

■ 15. Section 351.2 is amended as follows:

■ a. In paragraph (a), by removing “Within thirty-five business days from the date a proceeding is initiated by notice in the **Federal Register** pursuant to § 351.1(a), the Copyright Royalty Board” and adding “After the date for filing petitions to participate in a proceeding, the Copyright Royalty Judges” in its place and by removing “Board” and adding “Copyright Royalty Judges” in its place;

■ b. In paragraph (b)(1), by removing “To” and adding “Pursuant to 17 U.S.C. 801(b)(7)(A), to” in its place, by removing “or partial settlement”, and by removing “a full or partial” and adding “the” in its place; and

■ c. In paragraph (b)(2), by removing “Board will” and adding “Judges, pursuant to 17 U.S.C. 801(b)(7)(A), will” in its place, by removing “The Board may” and adding “If an objection to the adoption of an agreement is filed, the Copyright Royalty Judges may”, and by removing “Board concludes” and adding “Copyright Royalty Judges conclude” in its place.

■ 16. Section 351.3 is amended as follows:

■ a. In paragraph (a), by removing “Board” each place it appears and adding “Judges” in its place and by removing “§§ 351.4” and adding “§§ 351.5” in its place;

■ b. In paragraph (b)(1), by removing “Board” and adding “Judges” in its place;

■ c. In paragraph (b)(2), by removing “Board determines” and adding “Judges determine” in its place and by removing “Board shall” and adding “Judges shall” in its place; and

■ d. By revising paragraph (c).

The revisions to § 351.3 read as follows:

§ 351.3 Controversy and further proceedings.

* * * * *

(c) *Paper proceedings*—(1) *Standard*. The procedure under this paragraph (c) will be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure. In the absence of an agreement in writing among all participants, this procedure may be applied by the Copyright Royalty Judges either on the motion of a party or by the Copyright Royalty Judges *sua sponte*.

(2) *Procedure*. Paper proceedings will be decided on the basis of the filing of the written direct statement by the

participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

■ 17. Section 351.4 is amended as follows:

■ a. In paragraph (a), by removing “Board” and adding “Judges” in its place;

■ b. By revising the heading to paragraph (b);

■ c. In paragraph (b)(2), by revising the paragraph heading, by removing “designated testimony” and adding “past records and/or testimony” in its place, and by removing “of that testimony”; and

■ d. By removing paragraph (b)(4).

The revisions to § 351.4 read as follows:

§ 351.4 Written direct statements.

* * * * *

(b) *Required content*.

* * * * *

(2) *Designated past records and testimony*. * * *

* * * * *

■ 18. Section 351.5 is revised to read as follows:

§ 351.5 Discovery in royalty rate proceedings.

(a) *Schedule*. Following the submission to the Copyright Royalty Judges of written direct and rebuttal statements by the participants in a royalty rate proceeding, and after conferring with the participants, the Copyright Royalty Judges will issue a discovery schedule.

(b) *Document production, depositions and interrogatories*—(1) *Document production*. A participant in a royalty rate proceeding may request of an opposing participant nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that participant. Broad, nonspecific discovery requests are not acceptable. All documents offered in response to a discovery request must be furnished in as organized and useable form as possible. Any objection to a request for production shall be resolved by a motion or request to compel production. The motion must include a statement that the parties had conferred and were unable to resolve the matter.

(2) *Depositions and interrogatories*. In a proceeding to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. Similarly, the

participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. Parties may obtain such discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. Relevant information need not be admissible at hearing if the discovery by means of depositions and interrogatories appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Motions to request other relevant information and materials*. (1) In any royalty rate proceeding scheduled to commence prior to January 1, 2011, a participant may, by means of written or oral motion on the record, request of an opposing participant or witness other relevant information and materials. The Copyright Royalty Judges will allow such request only if they determine that, absent the discovery sought, their ability to achieve a just resolution of the proceeding would be substantially impaired.

(2) In determining whether such discovery motions will be granted, the Copyright Royalty Judges may consider—

(i) Whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

(ii) Whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

(iii) Whether the participant seeking the discovery had an ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

■ 19. Section 351.6 is revised to read as follows:

§ 351.6 Discovery in distribution proceedings.

In distribution proceedings, the Copyright Royalty Judges shall designate a 45-day period beginning with the filing of written direct statements within which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony. However, all parties shall be given a reasonable opportunity to conduct discovery on amended statements.

§ 351.7 [Amended]

■ 20. Section 351.7 is amended by removing “21-days” and adding “21 days” in its place, by removing “Board” each place it appears and adding “Judges” in its place, and by adding “written” before “Joint”.

§ 351.8 [Amended]

■ 21. Section 351.8 is amended by removing “Board” each place it appears and adding “Copyright Royalty Judges” in its place and by removing “hearing,” and adding “hearing and to provide for the submission of pre-hearing written legal arguments.” in its place.

■ 22. Section 351.9 is amended as follows:

- a. By revising paragraph (a);
- b. By revising the introductory text of paragraph (b);
- c. By removing paragraph (b)(1);
- d. By redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2), respectively;
- e. In newly redesignated paragraph (b)(2), by removing “Board’s” and adding “Copyright Royalty Judges” in its place and by removing “whether there are an even number of Judges sitting at the hearing.”;
- f. By removing paragraphs (b)(4) and (b)(5); and
- g. By adding new paragraphs (d) through (f).

The additions and revisions to § 351.9 read as follows:

§ 351.9 Conduct of hearings.

(a) *By panels.* Subject to paragraph (b) of this section, hearings will be conducted by Copyright Royalty Judges sitting *en banc*.

(b) *Role of Chief Judge.* The Chief Copyright Royalty Judge, or an individual Copyright Royalty Judge designated by the Chief Judge, may preside over such collateral and administrative proceedings, and over such proceedings under section 803(b)(1) through (5) of the Copyright Act, as the Chief Judge considers appropriate. The Chief Judge, or an individual Copyright Royalty Judge designated by the Chief Judge, shall have the responsibility for:

* * * * *

(d) *Notice of witnesses and prior exchange of exhibits.* Each party must provide all other parties notice of the witnesses who are to be called to testify at least one week in advance of such testimony, unless modified by applicable trial order. Parties must exchange exhibits at least one day in advance of being offered into evidence at a hearing, unless modified by applicable trial order.

(e) *Subpoenas.* The parties may move the Copyright Royalty Judges to issue a subpoena. The object of the subpoena shall be served with the motion and may appear in response to the motion.

(f) *Witnesses sequestered.* Subject to applicable trial order, witnesses, other than party representatives, may not be permitted to listen to any testimony and may not be allowed to review a transcript of any prior testimony.

■ 23. Section 351.10 is amended as follows:

- a. By revising paragraph (a);
- b. In paragraph (b), by removing “written direct statement” and adding “written statements” in its place and by removing “Board” and adding “Copyright Royalty Judges” in its place;
- c. By revising paragraph (c)(1);
- d. In paragraph (c)(2), by removing “a document” and adding “an exhibit” in its place;
- e. By revising paragraph (c)(3);
- f. By revising paragraph (d);
- g. By revising the introductory text to paragraph (e);
- h. By removing paragraph (e)(1); and
- i. By revising paragraphs (f) and (g).

The revisions to § 351.10 read as follows:

§ 351.10 Evidence.

(a) *Admissibility.* All evidence that is relevant and not unduly repetitious or privileged, shall be admissible. Hearsay may be admitted to the extent deemed appropriate by the Copyright Royalty Judges. Written testimony and exhibits must be authenticated or identified in order to be admissible as evidence. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to materials that can be self-authenticated under Rule 902 of the Federal Rules of Evidence such as certain public records. No evidence, including exhibits, may be submitted without a sponsoring witness, except for good cause shown.

* * * * *

(c) *Exhibits—(1) Submission.* Writings, recordings and photographs shall be presented as exhibits and marked by the presenting party. “Writings” and “recordings” consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

“Photographs” include still photographs, video tapes, and motion pictures.

* * * * *

(3) *Summary exhibits.* The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in the hearing may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The Copyright Royalty Judges may order that they be produced in the hearing.

(d) *Copies.* Anyone presenting exhibits as evidence must present copies to all other participants in the proceedings, or their attorneys, and afford them an opportunity to examine the exhibits in their entirety and offer into evidence any other portion that may be considered material and relevant.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, the principles and methods underlying the study, all relevant assumptions, all variables considered in the analysis, the techniques of data collection, the techniques of estimation and testing, and the results of the study’s actual estimates and tests presented in a format commonly accepted within the relevant field of expertise implicated by the study. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. Summarized descriptions of input data, tabulations of input data and the input data themselves shall be retained.

(f) *Objections.* Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing and to raise an objection that an opposing party has not furnished unprivileged underlying documents.

(g) *New exhibits for use in cross-examination.* Exhibits that have not been identified and exchanged in advance may be shown to a witness on cross-examination. However, copies of such exhibits must be distributed to the Copyright Royalty Judges and to the other participants before being shown to the witness at the time of cross-examination, unless the Copyright Royalty Judges direct otherwise. Such exhibits can be used solely to impeach the witness’s direct testimony.

§ 351.11 [Amended]

■ 24. Section 351.11 is amended by removing “Board upon” and adding

“Judges upon” in its place and by removing “by the Board.” and adding “by the Copyright Royalty Judges.” in its place.

§ 351.12 [Removed]

- 25. Remove § 351.12.

§ 351.13 through § 351.15 [Redesignated as § 351.12 through § 351.14]

- 26. Redesignate § 351.13 through § 351.15 as § 351.12 through § 351.14, respectively, and revise the newly redesignated § 351.12 through § 351.14 to read as follows:

§ 351.12 Closing the record.

To close the record of a proceeding, the presiding Judge shall make an announcement that the taking of evidence has concluded.

§ 351.13 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Copyright Royalty Judges. Anyone wishing to inspect the transcript of a hearing may do so at the offices of the Copyright Royalty Board.

(b) The transcript of testimony and written statements, except those portions to which an objection has been sustained, and all exhibits, documents and other items admitted in the course of a proceeding shall constitute the official written record. The written record, along with the Copyright Royalty Judges’ final determination, shall be available at the Copyright Royalty Board’s offices for public inspection and copying.

§ 351.14 Proposed findings of fact and conclusions of law.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs or memoranda of law, or may be directed by the Copyright Royalty Judges to do so. Such filings, and any replies to them, shall take place after the record has been closed.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding unless good cause for the failure is shown. A party waives any objection to a provision in the determination unless the provision conflicts with a proposed finding of fact or conclusion of law filed by the party.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed

conclusions shall be stated and numbered by paragraph separately. Failure to comply with this paragraph (c) may result in the offending paragraph being stricken.

PART 352—DETERMINATIONS

- 27. The authority citation for part 352 continues to read as follows:

Authority: 17 U.S.C. 803.

§ 352.1 [Amended]

- 28. Section 352.1 is amended by removing “of the Board” after “determinations” and by removing “by the Board” after “determination”.

§ 352.2 [Amended]

- 29. Section 352.2 is amended by removing “Board” and adding “Judges” in its place, by removing “its” and adding “their” in its place, and by adding “The date the determination is “issued” refers to the date of the order.” after “first occurs.”

- 30. Section 352.3 is revised to read as follows:

§ 352.3 Final determinations.

Unless a motion for a rehearing is timely filed within 15 days, the determination by the Copyright Royalty Judges pursuant to 17 U.S.C. 803(c) in a proceeding is final when it is issued.

PART 353—REHEARING

- 31. The authority citation for part 353 continues to read as follows:

Authority: 17 U.S.C. 803.

- 32. Section 353.1 is revised to read as follows:

§ 353.1 When granted.

A motion for rehearing may be filed by any participant in the relevant proceeding. The Copyright Royalty Judges may grant rehearing upon a showing that any aspect of the determination may be erroneous.

§ 353.3 [Amended]

- 33. Section 353.3 is amended by removing “Board” each place it appears and adding “Judges” in its place and by removing “order either denying the motion or ordering further proceedings” and adding “appropriate order” in its place.

- 34. Section 353.4 is revised to read as follows:

§ 353.4 Filing deadline.

A motion for rehearing must be filed within 15 days after the date on which the Copyright Royalty Judges issue an initial determination.

§ 353.5 [Amended]

- 35. Section 353.5 is amended by removing “Board” and adding “Judges” in its place and by removing “However, participants should be aware that nonparticipation” and adding “Nonparticipation” in its place.

PART 354—SUBMISSIONS TO THE REGISTER OF COPYRIGHTS

- 36. The authority citation for part 354 continues to read as follows:

Authority: 17 U.S.C. 802

- 37. Section 354.1 is revised to read as follows:

§ 354.1 Material questions of copyright law.

(a) *Discretionary referrals.* The Copyright Royalty Judges may seek guidance from the Register of Copyrights with respect to a material question of substantive law, concerning an interpretation or construction of those provisions of the Copyright Act, that arises in the course of their proceedings.

(b) *How presented.* A question of substantive law may be referred to the Register of Copyrights at the request of one or more of the Copyright Royalty Judges. A question of substantive law may also be referred to the Register of Copyrights as a request submitted by motion of a participant, provided that one or more of the Copyright Royalty Judges agrees with the participant’s request.

(1) *Referral by Judges.* One or more of the Copyright Royalty Judges may refer what he or she believes to be a material question of substantive law to the Register of Copyrights at any time during a proceeding by issuing a written referral that is made part of the record of that proceeding. The referral will state the issue(s) to be referred and the schedule for the filing of briefs by the parties of the issue(s). After the briefs and other relevant materials are received, they will be transmitted to the Register of Copyrights.

(2) *Motion by participant.* Any participant may submit a motion to the Copyright Royalty Judges (but not to the Register of Copyrights) requesting their referral to the Register of Copyrights a question that the participant believes would be suitable for referral under paragraph (a) of this section.

(i) *Content.* The motion should be captioned “Motion of [Participant(s)] Requesting Referral of Material Question of Substantive Law.” The motion should set forth, at the outset, the precise legal question for which the moving party is seeking interlocutory referral to the

Register of Copyrights. The motion should then proceed to explain, with brevity, why the issue meets the criteria for potential referral under paragraph (a) of this section and why the interests of fair and efficient adjudication would be best served by obtaining interlocutory guidance from the Register of Copyrights. The motion should not include argument on the merits of the issue, but may include a suggested schedule of briefing that would make reasonable provision for comments and legal arguments, in such a way as to avoid delay and duplication.

(ii) *Time of motion.* A motion for referral of a material question of substantive law to the Register of Copyrights should be filed as soon as possible in the relevant proceeding, but no later than any deadline set by the Copyright Royalty Judges.

(iii) *Action on motion*—(A) *Referral granted.* Upon consideration of a Motion Requesting Referral of Material Question of Substantive Law, if one or more of the Copyright Royalty Judges agrees with the request, the Chief Judge shall issue an appropriate referral. The referral will state the issue(s) to be referred and the schedule for the filing of briefs by the parties of the issue(s). After the briefs and other relevant materials are received, they will be transmitted to the Register of Copyrights.

(B) *Referral denied.* If none of the Copyright Royalty Judges agrees with the request, the Board will issue an order denying the request which will provide the basis for the decision. A copy of any order denying a Motion Requesting Referral of Material Question of Substantive Law will be transmitted to the Register of Copyrights.

(c) *No effect on proceedings.* The issuance of a request to the Register of Copyrights for an interpretive ruling under this part does not delay or otherwise affect the schedule of the participants' obligations in the relevant ongoing proceeding, unless that schedule or those obligations are expressly changed by order of the Copyright Royalty Judges.

(d) *Binding effect; time limit.* The Copyright Royalty Judges will not issue a final determination in a proceeding where the discretionary referral of a question to the Register of Copyrights under this part is pending, unless the Register has not delivered the decision to the Copyright Royalty Judges within 14 days after the Register receives all of the briefs of the participants. If the decision of the Register of Copyrights is timely delivered to the Copyright Royalty Judges, the decision will be included in the record of the

proceeding. The legal interpretation embodied in the timely delivered response of the Register of Copyrights in resolving material questions of substantive law is binding upon the Copyright Royalty Judges and will be applied by them in their final determination in the relevant proceeding.

§ 354.2 [Amended]

■ 38. Section 354.2 is amended as follows:

- a. In paragraph (a), by removing “Board” each place it appears and adding “Judges” in its place; and
- b. In paragraph (b), by removing “Board” each place it appears and adding “Judges” in its place and by adding “The legal interpretation embodied in the timely delivered response of the Register of Copyrights in resolving material questions of substantive law is binding upon the Copyright Royalty Judges and will be applied by them in their final determination in the relevant proceeding.” after “expired.”.

§ 354.3 [Amended]

■ 39. Section 354.3 is amended by removing “Board” each place it appears and adding “Judges” in its place.

§ 354.4 through 354.5 [Removed]

■ 40. Remove § 354.4 through § 354.5.

Subchapter C—Submission of Royalty Claims

■ 41. Add a new Subchapter C as set forth above and redesignate Part 360 from Subchapter B to Subchapter C.

PART 360—FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE

■ 42. The authority citation for part 360 continues to read in part as follows:

Authority: 17 U.S.C. 801, 803, 805.

* * * * *

§ 360.4 [Amended]

■ 43. Section 360.4 is amended as follows:

- a. In paragraph (a)(2), by adding “Copyright Office” before “Public Information Office” each place it appears, by removing “located at the U.S. Copyright Office,” and adding “in the” in its place, and by removing “LM-401,” after “Building,”; and
- b. In paragraph (a)(3), by removing “LM-403,”.

§ 360.13 [Amended]

■ 44. Section 360.13 is amended as follows:

- a. In paragraph (a)(2), by adding “Copyright Office” before “Public Information Office” each place it appears, by removing “located at the U.S. Copyright Office,” and adding “in the” in its place, and by removing “LM-401,” after “Building,”; and
- b. In paragraph (a)(3), by removing “LM-403,”.

§ 360.24 [Amended]

■ 45. Section 360.24 is amended as follows:

- a. In paragraph (a)(2), by adding “Copyright Office” before “Public Information Office” each place it appears, by removing “located at the U.S. Copyright Office,” and adding “in the” in its place, and by removing “LM-401,” after “Building,”; and
- b. In paragraph (a)(3), by removing “LM-403,”.

Dated: August 29, 2006.

James Scott Sledge,

Chief Copyright Royalty Judge, Copyright Royalty Board.

Approved by:

James H. Billington,

The Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[EPA-HQ-SFUND-2005-0520; FRL-8217-4]

RIN 2050-AG32

Reportable Quantity Adjustment for Isophorone Diisocyanate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to adjust the reportable quantity (RQ) for Isophorone Diisocyanate (IPDI). Reportable quantities for many Extremely Hazardous Substances (EHS) under the Emergency Planning and Community Right-to-Know Act (EPCRA) were adjusted to their threshold planning quantities (TPQ) in a final rule on May 7, 1996. On September 8, 2003, EPA modified the TPQ for IPDI to 500 pounds.

However, EPA inadvertently omitted an RQ adjustment for this substance. Therefore, EPA is now adjusting the RQ for IPDI to be 500 pounds.

DATES: This final rule is effective on November 13, 2006, unless EPA receives adverse comments by October 11, 2006.