

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will 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, eliminate 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 does not create an environmental risk to health or risk to safety that may 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 does 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.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides 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 (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 8:30 p.m. on July 4, 2003 through 9:30 p.m. on July 6, 2003 add a new § 165.T11–042 to read as follows:

#### § 165.T11–042 Safety Zone; Colorado River, Laughlin, Nevada.

(a) *Location.* The temporary safety zone is specifically defined as 600 yards around the point 35°09.270' N, 114°34.222' W.

(b) *Enforcement period.* This section will be enforced from 8:30 p.m. to 9:30 p.m. (PDT) on July 4, 2003 and from 8:30 p.m. through 9:30 p.m. on July 6, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the

designated representative. The designated representative may be contacted via VHF–FM channel 16.

Dated: June 6, 2003.

**Robert E. McFarland,**

*Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego.*

[FR Doc. 03–15302 Filed 6–17–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### 33 CFR Part 203

RIN 0710–AA47

#### Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers; Correction

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Final rule; correction.

**SUMMARY:** The Corps promulgated a final rule to revise 33 CFR part 203. This file rule was published in the **Federal Register** on April 21, 2003, with inadvertent errors in section 203.62. The final rule completes the rulemaking process initiated on February 26, 2002, with publication of the proposed rule to revise 33 CFR part 203, which implements Pub. L. 84–99. The revisions are necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (WRDA 96), and streamline certain procedures concerning Corps authority addressing disaster preparedness, response, and recovery activities. WRDA 96 additions include the option to provide nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and the provision of a levee owner's manual. Other significant changes include expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations. **DATES:** This rule became effective on May 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey D. Jensen, Headquarters, U.S. Army Corps of Engineers, Civil Emergency Management Branch, CECW–HS–E, at (202) 761–4561.

#### SUPPLEMENTARY INFORMATION:

*I. Background.* Section 203.62 is corrected by redesignation of the second paragraph (d) "Guidance" as paragraph (e) and paragraph (e) "Guidance-transport of water" as paragraph (f) and

paragraph (f) "Request for assistance" as paragraph (g).

Dated: June 2, 2003.

**Lawrence A. Lang,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

■ Accordingly, 33 CFR part 203 section 203.62 is correctly revised as follows:

**PART 203—EMERGENCY  
EMPLOYMENT OF ARMY AND OTHER  
RESOURCES, NATURAL DISASTER  
PROCEDURES**

**§ 203.62 Drought assistance.**

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells for farmers, ranchers, political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section.*

(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army

determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells, and

(B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(e) *Guidance—construction of wells.*

(1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(f) *Guidance—transport of water.* (1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(g) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

[FR Doc. 03-15305 Filed 6-17-03; 8:45 am]

BILLING CODE 3710-92-P

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 260

[Docket No. 96-5 CARP DSTRA]

#### Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulation.

**SUMMARY:** The Copyright Office is announcing the final regulations that will govern SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., when it functions as the designated agent for the purpose of receiving royalty payments and statements of accounts from nonexempt subscription digital transmission services which make digital transmissions of sound recordings under a statutory license.

**DATES:** *Effective Date:* July 18, 2003.

*Applicability Date:* The regulations apply to the license period which began on November 1, 1995.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which

allows certain noninteractive digital audio services to transmit sound recordings under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the statutory license.

Among the categories of services that may use the section 114 license are preexisting subscription services<sup>1</sup> of which there are only three: Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. ("DMX"); and Muzak, L.P. ("Muzak").

In 1998, the Librarian of Congress adopted final rates and terms applicable to the preexisting services after a hearing before a copyright arbitration royalty panel ("CARP"). See 63 FR 25394 (May 8, 1998). In that proceeding, the parties proposed a term which gave the RIAA the responsibility for collecting and distributing the royalty fees to all copyright owners. *Id.* at 25397. The Librarian adopted this term, then crafted additional regulations that afforded copyright owners a means to verify the accuracy of the royalty payments made by the RIAA collective,<sup>2</sup> established the value of each performance, specified the nature of the costs that RIAA may deduct from the royalty fees prior to distribution, and set forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate and the additional terms announced in the Librarian's determination and final order. See, *Recording Industry Ass'n v. Librarian of Congress*, 176 F.3d 528 (D.C. Cir. 1999). The United States Court of Appeals for the District of Columbia Circuit upheld the rate and found that the Librarian had the authority to impose additional terms on copyright owners or their agents. However, it remanded for further consideration certain terms imposed on RIAA under 37 CFR 260.2(d), 260.3(d), 260.6(b), and

260.7, because the CARP had not considered these issues, leaving the record devoid of any evidence upon which to fashion any terms concerning the collection and distribution of the royalty fees. *Id.* at 536.

In 2001, RIAA petitioned the Copyright Office to adopt new terms that would govern the RIAA collective. These terms were to be adopted pursuant to § 251.63(b) which allows the Librarian of Congress to adopt proposed terms that are the result of settlement negotiations, provided that no person with a substantial interest and an intent to participate in a CARP proceeding files an objection.

Accordingly, the Copyright Office published the proposed terms in the **Federal Register** and requested public comment. 66 FR 38226 (July 23, 2001). In response to this notice, the American Federation of Musicians ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") filed a Notice of Intent to Participate and objections to certain of the proposed terms. Shortly thereafter, RIAA began discussions with AFTRA and AFM regarding their objections, and the matter was held in abeyance, pending the outcome of those discussions.

In the meantime, Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA"), Public Law 107-321, 116 Stat. 2780, which, among other things, amended 17 U.S.C. 114(g) in two important ways that bear directly on two key issues raised in this proceeding. First, the SWSA provides for direct payment to featured recording artists and to the administrators of the escrow accounts provided for in 17 U.S.C. 114(g)(2)(B)&(C). Second, the act allows a designated agent, prior to the distribution of the royalty receipts, to deduct reasonable costs incurred by that agent in the administration of those receipts, including, but not limited to, costs associated with the collection and distribution of the royalty fees and the costs incurred in participating in negotiations or arbitration proceedings under sections 112 and 114.

Because of these changes in the law, RIAA revised its proposed amendments to 37 CFR part 260 to conform the terms in question to the new law and, in doing so, it addressed the concerns of AFM and AFTRA. However, the proposed rules could not be adopted until all interested parties had an opportunity to comment. Therefore, pursuant to § 251.63(b) of the CARP rules, the Library published in the **Federal Register** the proposed terms and sought comment from any party with a substantial interest in this proceeding. 68 FR 19482 (April 21, 2003).

<sup>1</sup> A "preexisting subscription service" is defined as:

a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a number of limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

17 U.S.C. 114(j)(11).

<sup>2</sup> In November 2000, RIAA formed "SoundExchange," an unincorporated division of RIAA, to administer statutory licenses, including its responsibilities under the Librarian's May 8 Order. See, Revised RIAA petition to Establish Terms Governing SoundExchange at 1 n.1 (March 12, 2003).