such as decks and balconies, walkways and driveways;

iii. The roofing, plumbing systems, electrical systems, heating and air conditioning systems;

iv. All interiors; and

v. All insulation and ventilation systems, as well as fireplaces and solid fuel-burning appliances.

3. Only forward mortgages are eligible for the waiver. Mortgages insured under HUD’s HECM program are ineligible for the waiver.

III. Guidance on the Conditions for Waiver Eligibility

A. Seller’s Acquisition Cost

The seller’s acquisition cost is the purchase price which the seller paid for the property, and the following costs (if paid by the seller):

• Closing costs, plus

• Prepaid costs, including commissions.

The seller’s acquisition cost does not include the cost of repairs that the seller makes to the property.

B. Justification and Documentation of Increase in Value

If the resale price of the property is greater than 20 percent above the seller’s acquisition cost, the mortgage will be eligible for FHA insurance only if the mortgagor justifies the increase in value. The mortgagor must verify that the seller has completed sufficient legitimate renovation, repair, or rehabilitation work on the subject property to substantiate the increase in value by retaining supporting documentation in the loan file or by providing a second appraisal.

• If the mortgagee uses a second appraisal:

○ An FHA roster appraiser must perform the appraisal in compliance with all FHA appraisal reporting requirements.

○ The mortgagee may not use an appraisal done for a conventional loan even if it was completed by an FHA roster appraiser.

○ The mortgagee may not charge the cost of the second appraisal to the homebuyer.

If the mortgagor has ordered a second appraisal to document the increase in value, the mortgagor must not use this appraisal for case processing and must not enter it into FHA Connection.

C. Property Inspection Report

If the resale price of the property is greater than 20 percent above the seller’s acquisition cost, the mortgagee will be eligible for FHA insurance only if the mortgagor obtains a property inspection and provides the inspection report to the buyer before closing. The borrower, lender, or mortgage broker (if one is involved in the transaction) may order the property inspection. The lender or mortgage broker may charge the borrower for this inspection.

D. Repairs

If the inspection report notes that repairs are required because of structural or “health and safety” issues, those repairs must be completed prior to closing. After completion of repairs to address structural or “health and safety” issues, the inspector must conduct a final inspection to determine if the repairs have been completed satisfactorily and eliminated the structural or “health and safety” issues. The borrower, lender, or mortgage broker may order the final inspection.

IV. Compliance With the Paperwork Reduction Act

The information collection requirements applicable to this waiver have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control No. 2502–0059. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

VI. Period of Waiver Eligibility

The waiver that is the subject of this notice remains effective beyond December 31, 2012, through December 31, 2014, for all sales contracts executed on or after February 1, 2010, the availability date provided by the issuance of the waiver in January 2010, unless extended or withdrawn by HUD.

By notice, HUD shall notify the public of any extension or withdrawal of this waiver. If as a result of this waiver, there is a significant increase in defaults on FHA-insured mortgages and an increase in mortgage insurance claims that are attributable to mortgages insured as a result of exercise of this waiver authority, HUD may withdraw this waiver immediately.

Dated: November 26, 2012.

Carol J. Galante,
Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–28918 Filed 11–28–12; 8:45 am]
would endure significant hardships if

musical works under Section 115 and

the case where the licensee intends to

such filings would be accepted in the

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Notice in the Office in an electronic

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allowed licensees to serve Notices

201.18(a)(4). The 2004 amendments also

paragraphs (d)(1)(i) through (iv) of this

which lists multiple works shall be

considered a composite filing of

more functional. 69 FR 34578 (June 22,

Among the 2004 amendments to

37 CFR 201.18 was a provision that

allowed that a Notice “may designate

any number of nondramatic musical

works, provided that the copyright

owner of each designated work or,

in the case of any work having more than

one copyright owner, any one of the

copyright owners is the same and that

the information required under the

paragraphs (d)(1)(i) through (iv) of this

section does not vary [i.e., name and

contact information of licensee; name

and contact information of primary

entity making and distributing

phonorecords, and information

concerning yearly accounting periods].

For purposes of this section, a Notice

which lists multiple works shall be

considered a composite filing of

multiple Notices and fees shall be paid

accordingly if filed in the Copyright

Office under paragraph (f) of this section

(i.e., a separate fee, in the amount set

forth in § 201.3(e)(1), shall be paid for
each work listed in the Notice).” 37 CFR

201.18(a)(4). The 2004 amendments also

allowed licensees to serve Notices

directly on copyright owners or

designated agents by means of an

electronic transmission when the

copyright owner or designated agent has

a written public policy that it can

accommodate such submissions. 37 CFR

201.18(a)(7).

Earlier in the 2004 rulemaking

process the Office also considered

whether to allow a licensee to file a

Notice in the Office in an electronic

format. The Office determined that

it was not prepared to accept

electronically filed Notices because it

did not have in place the systems that

would accommodate such filings.

However, the Office anticipated that

such filings would be accepted in the

future. The Office did provide that in

the case where the licensee intends to

license a high volume of nondramatic

musical works under Section 115 and

would endure significant hardships if

required to submit the Notices under

the standard practices, the licensee may

contact the Licensing Division of the

Copyright Office to inquire whether

special arrangements could be made

for submission of the Notice

electronically. 69 FR 11566, 11570 (March 11,

2004).

The Office is aware of a growing need

for an electronic filing system for filing

Section 115 Notices with the Copyright

Office because of the large number of

works being used under the compulsory

license where service of the Notice

cannot be made effectively on the

copyright owner. To meet this need, the

Office is now preparing to accept

specific types of electronically filed

Notices addressing multiple

nondramatic musical works. Hence, the

Office is amending its regulations in

§ 201.18 by providing for use of an

online system for submission of Notices

covering multiple nondramatic musical

works.

In its Notice of Proposed Rulemaking

published in May 2012, the Copyright

Office proposed changes to the

regulations governing the filing of

Section 115 Notices. 77 FR 31237 (May

25, 2012). First, the Office proposed to

clarify its rules for submission of

Notices in paper form that contain

multiple titles of nondramatic musical

works. The proposal noted that, while

in practice the Office does accept and

process Notices with multiple titles in

the case where no copyright owner of

any of the works can be identified, the

regulations do not specifically

contemplate this situation. Thus, the

Office proposed to amend its

regulations to clarify that a Notice filed in a

paper format may list multiple works in a

single Notice when any of the following

circumstances apply: In the case where

no copyright owner can be identified

from the Copyright Office records for

any of the works listed in the Notice; in

the case where the copyright owner of

each work listed in the Notice is the

same and the records of the Copyright

Office do not include an address at

which notice can be served; or for works

having more than one copyright owner, in

the case where the works listed in the

Notice share a common copyright owner

and the records of the Copyright

Office do not include an address at

which notice can be served on any of the

copyright owners for the subject works.

The Office proposed to amend the

regulations so that Notices

addressing multiple nondramatic

musical works may be submitted

electronically as XML files, regardless of

whether the copyright owner of each

designated work is the same, provided

that the Notice does not include a

nondramatic musical work when the

identity and address of at least one of its

copyright owners may be found in the

public record of the Copyright Office.

Fees for such electronic Notices, the

Office proposed, would have to be paid

through a Copyright Office deposit

account (pursuant to § 201.6(b) of the

Copyright Office regulations), at least

during the introductory period of the

online filing process. Use of a deposit

account will allow the Office to make

any necessary fee payments

immediately and it avoids the need to

solve the technological and security

issues associated with providing a credit

card payment in this first iteration of

the system.

Further to the question of the

processing of electronic Section 115

Notices, the Copyright Office proposed

not to require an electronic signature

during the initial rollout of the filing

process, though it did note plans to add

an electronic signature requirement in

later versions of the system. Under the

initial rollout, because the fee for Notice

must be paid through a deposit account,

the online system will be able to use the

deposit account information to

reasonably verify and authenticate the

identity of the person submitting and

validating Notices.

The Copyright Office, in its May 25,

2012 notice of proposed rulemaking also

proposed two additional amendments.

The first of these would clarify that the

Office does not examine Notices for

legal sufficiency, would encourage filers

to take care to comply with all the

statutory and regulatory requirements

pertaining to such Notices, and would

note that the Office will notify a

prospective licensee when a Notice is

not accompanied by payment of the

required fee. The second additional

amendment would add a Privacy Act

Advisory Statement in § 201.18, which

would fulfill the Office’s obligation to

notify the public that Notices with

personally identifying information filed

with the Office become public records.

Comments

The Office received two comments in

response to its notice of proposed

rulemaking. One, from Attorney Chris

Garvey, supported the proposal to

permit the electronic submission of

section 115 Notices. The other, from

Public Knowledge (“PK”), also

supported the electronic filing proposal,

along with making further suggestions.

PK proposed that electronically filed
Notices should be permitted for single nondramatic musical works, and that the Office should “hasten to build the capacity to authenticate licensees and receive payment information without deposit accounts.” This latter measure, PK maintained, would result in long-term reduced transaction costs. PK also suggested that the Office “implement a searchable, electronic Notice database for public use” in order to minimize transaction costs between copyright owners and licensees, and avoid the hourly fee that the Copyright Office charges for searches of non-public-facing records.

Discussion

The Office is in agreement with PK in its goal of further improving the functionality of the Office’s electronic system “to simplify the Section 115 process for licensees, copyright owners, and the Office itself.” The Office believes that the amendments detailed above are an interim step towards meeting this goal. The Office also notes that of the three PK proposals, one is already encompassed in the amendments and the other two will be instituted as part of the upgrades to the Office’s technical infrastructure.

Regarding the ability of a person to electronically file a Notice for a single nondramatic musical work, the text of the amendments to § 201.18 states that such a Notice “may designate multiple nondramatic musical works.” The use of the word “may” indicates that multiple works need not be designated, and that an electronic Notice may be filed for a single work as well. However, a person who files an electronic Section 115 Notice during this initial rollout phase must be enrolled in the Office’s deposit account program. In order to accommodate a filer of a Notice identifying only one or a few titles who does not have a deposit account, the Office intends in the future to upgrade the online filing system to require an electronic signature and to accept additional payment options such as credit card payments. At the moment, however, the focus is on offering a mechanism for filing Notices with large numbers of titles in a manner that can easily be administered by the Office at this time.

Regarding PK’s desire for a public database of Section 115 Notices, the Office acknowledges that while the search capability of the electronically filed Notices will not be directly available to the public for technical reasons, this will only be the case during the initial rollout of the service, and that future upgrades to the system will include a searchable database.

This Final Rule makes one change to the proposed amendments not suggested by the commenters. In new § 201.18(a)(4)(iii), the phrase “in electronic format” in the first sentence is replaced with “through its electronic filing system.” This change merely clarifies the subject of the subsection.

Pilot Program

While the Office is amending its regulations to accept electronic filing of the Section 115 Notices of Intention to Obtain a Compulsory License, it needs to fully test the system before making it available to the public for actual, valid submissions of Notices. Thus, members of the public are invited to participate in a Beta test of the proposed electronic system. Parties wishing to participate in the Beta testing phase will contact Tracie Coleman in the Licensing Division of the Copyright Office at 202–707–3600, tmnau@loc.gov. The Beta testing will require participants to upload “test” Notices to the Beta version of the electronic system to ensure proper functionality. “Test” Notices uploaded during the Beta testing phase will not require the submission of a filing fee, and they will not have any legal effect or otherwise be considered valid for licensing purposes. The Beta testing will be limited to selected participants until system testing is complete. Testing is expected to be completed by the time the rule becomes effective.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

In consideration of the foregoing, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *
(d)(1)(i) through (iv) of this section does not vary, and that for any designated work, the records of the Copyright Office do not include an address at which notice can be served.

* * * * *

(e) * * *

(5) If the Notice is filed in the Office electronically, the person or entity intending to obtain the compulsory license or a duly authorized agent of such person or entity shall, rather than signing the Notice, attest that he or she has the appropriate authority of the licensee, including any related entities listed, if applicable, to submit the electronically filed Notice on behalf of the licensee.

* * * * *

(g) Filing date and legal sufficiency of Notices. The Copyright Office will notify a prospective licensee when a Notice was not accompanied by payment of the required fee. Notices shall be deemed filed as of the date the Office receives both the Notice and the fee, if applicable. If the prospective licensee fails to remit the required fee, the Notice will be deemed not to have been filed with the Office. However, the Copyright Office does not review Notices for legal sufficiency or interpret the content of any Notice filed with the Copyright Office under this section. Furthermore, the Copyright Office does not screen Notices for errors or discrepancies and it does not generally correspond with a prospective licensee about the sufficiency of a Notice. If any issue (other than an issue related to fees) arises as to whether a Notice filed in the Copyright Office is sufficient as a matter of law under this section, that issue shall be determined not by the Copyright Office, but shall be subject to a determination of legal sufficiency by a court of competent jurisdiction. Prospective licensees are therefore cautioned to review and scrutinize Notices to assure their legal sufficiency before filing them in the Copyright Office.

* * * * *

(i) Privacy Act Advisory Statement. The authority for receiving the personally identifying information included within a Notice of Intention to obtain a compulsory license and may not entitle the prospective licensee to the benefits available under 17 U.S.C. 115. The principal uses of the requested information are the establishment and maintenance of a public record of the Notices of Intention to obtain a compulsory license received in the Licensing Division of the Copyright Office. Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright records including online catalogs, and preparation of search reports upon request.


Maria A. Pallante,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

[FR Doc. 2012–28906 Filed 11–28–12; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2011–2 CRB NCEB II]

Determination of Reasonable Rates and Terms for Noncommercial Broadcasting

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2013, and ending on December 31, 2017.

DATES: Effective Date: January 1, 2013.

Applicability Dates: The regulations apply to the license period January 1, 2013, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (“Judges”) to conduct proceedings every five years, beginning in 2006, to determine the rates and terms for the section 118 license. 17 U.S.C. 804(b)(6). Accordingly, the Judges conducted a proceeding to determine the rates and terms for the license period 2008–2012 and published final regulations on November 30, 2007. 72 FR 67646.


The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 30, 2011. The Judges received written direct statements from CRA, BMI, ASCAP, and MRI, as well as several notifications of settlement and proposed rates and terms for the Judges to adopt.

There are two ways that copyright owners and public broadcasting entities may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners’ works covered by the license. Section 118(b)(2) provides that such license agreements “shall be given effect in lieu of any determination by the Judges.” Therefore, provided that copies of the agreement are submitted to the Judges “within 30 days of execution,” 17 U.S.C. 118(b)(2), the Judges received several agreements.