Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

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:


2. Add § 165.T01–0843 to read as follows:

§ 165.T01–0843 Safety Zone; Barters Island Bridge, Back River, Barters Island, ME.

(a) Location. The following area is a safety zone: All navigable waters on Back River, within a 50-yard radius of the center point of the Barters Island Bridge that spans Back River between Barters Island and Hodgdon Island in position 43°52′51″ N, 069°40′19″ W (NAD 83).

(b) Definitions. As used in this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been designated by the Captain of the Port (COTP) Northern New England, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

Northern New England to enforce this section.

(c) Effective and enforcement period. This rule is effective without actual notice from December 7, 2018 through 11:59 p.m. on January 31, 2021. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on December 1, 2018 through December 7, 2018. This rule will only be enforced during operations on replacement of the Barters Island Bridge or other instances which may cause a hazard to navigation, or when deemed necessary by the Captain of the Port (COTP), Northern New England.

(d) Regulations. The general regulations contained in § 165.23, as well as the following regulations, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP or the COTP’s designated representative.

(2) To obtain permission required by this regulation, individuals may reach the COTP or the COTP’s designated representative via Channel 16 (VHF–FM) or (207) 741–5465 (Sector Northern New England Command Center).

(3) During periods of enforcement, any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP’s designated representative.

(4) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone must proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP’s designated representative.

Dated: November 30, 2018.

B.J. LeFebvre,
Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 203, and 210

Notices of Intention and Statements of Account Under Compulsory License To Make and Distribute Phonorecords of Musical Works

AGENCY: U.S. Copyright Office, Librarian of Congress.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Copyright Office is issuing interim regulations pursuant to the Musical Works Modernization Act, title I of the recently enacted Orrin G. Hatch–Bob Goodlatte Music Modernization Act. This interim rule amends the Office’s existing regulations pertaining to the compulsory license to make and distribute phonorecords of musical works so as to conform the existing regulations to the new law, including with respect to the operation of notices of intention and statements of account, and to make other minor technical updates. To be clear, this interim rule is generally directed at the present transition period before a blanket license is offered by a mechanical licensing collective and does not include regulatory updates that may be required in connection with the future offering of that blanket license; such updates will be the subject of future rulemakings. These regulations are issued on an interim basis with opportunity for public comment to avoid delay in making these necessary updates and clarifications and because they are technical in nature. The Office welcomes comment on these interim regulations.

DATES: The effective date of the interim regulations is December 7, 2018. Written comments must be received no later than 11:59 p.m. Eastern Time on January 22, 2019.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office’s website at https://www.copyright.gov/rulemaking/mma-115-teachamend/. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT:

Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, Steve Ruwe, Assistant General Counsel, by email at sruwe@copyright.gov, or Jason E. Sloan, Assistant General Counsel, by email at jslo@copyright.gov. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob
Goodlatte Music Modernization Act ("MMA"). This bipartisan and unanimously enacted legislation represents the realization of years of effort by a wide array of policymakers and stakeholders, as well as the U.S. Copyright Office, to update the music licensing landscape to better facilitate legal licensing of music by digital services.

Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory "mechanical" license for making and distributing phonorecords of nondramatic musical works available under 17 U.S.C. 115. Prior to the MMA, a compulsory license was obtained by licensees on a per-work, song-by-song basis, whereby a licensee was required to serve a notice of intention to obtain a compulsory license ("NOI") on the relevant copyright owner (or file the NOI with the Copyright Office if the Office's public records did not identify the copyright owner and include an address at which notice could be served) and then pay applicable royalties accompanied by accounting statements.

The MMA amends this regime in multiple ways, most significantly by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries ("DPDs") of musical works, including in the form of permanent downloads, limited downloads, or interactive streams. Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a new entity called the mechanical licensing collective ("MLC"), to be designated by the Register of Copyrights. Under the MMA, compulsory licensing of phonorecords that are not DPDs (e.g., CDs, vinyl, tapes, and other types of physical phonorecords) continues to operate on a per-work, song-by-song basis, the same as before.

The new blanket license created by the MMA will not become available until the license availability date, which is January 1 following the expiration of the 2-year period after the enactment date, or January 1, 2021. Until that time, the MMA "creates a transition period in order to move from the current work-by-work license to the new blanket license." During this current transition period, right owners seeking to obtain a compulsory license to make DPDs must continue to do so on a song-by-song basis by serving NOIs on copyright owners "if the identity and location of the musical work copyright owner is known," and paying them applicable royalties accompanied by statements of account. If the musical work copyright owner is unknown, a digital music provider may no longer file a NOI with the Copyright Office, but must "continue[] to search for the musical work copyright owner" using good-faith, commercially reasonable efforts. The digital music provider must eventually either account for and pay accrued royalties to the relevant musical work copyright owner(s) when found or, if they are not found before the end of the transition period, account for and transfer the royalties to the MLC at that time.

A digital music provider complying with these requirements can avoid itself of a limitation on liability for making an unauthorized DPD to the royalties that would be due under the compulsory license. On and after the license availability date, a compulsory license to make DPDs will generally only be available through the new blanket license, subject to a limited exception for record companies to continue using the song-by-song licensing process to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work (called an "individual download license"). As the legislative history notes, the MMA "maintains the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads," but eliminates the pass-through license for digital music providers "to engage in activities related to interactive streams or limited downloads." The Office promulgates the following interim rule to make technical amendments to its existing section 115-related regulations to harmonize them with the MMA's requirements, and to make other minor technical updates. These amendments largely fall into two categories: Those affecting NOIs and those affecting statements of account. The Office declines at this time to substantively amend the existing regulations beyond the statutorily required updates. The intent of the legislation does not signal to the Office that it should be overhauling existing regulations during the transition period before the blanket license becomes available; such changes could alter private companies' long-established business practices and expectations with respect to NOIs and royalty statements during the transition period beyond what the statute requires. Having said that, the Office welcomes public comment on these amendments and any other specific technical amendments that stakeholders would like the Office to consider.

A. Notices of Intention

Under the interim rule, 37 CFR 201.18 is primarily updated to implement 17 U.S.C. 115(b), as amended by the MMA. As outlined above, as of enactment of the MMA on October 11, 2018: (1) NOIs pertaining to phonorecords that are not DPDs (i.e., physical phonorecords such as CDs, vinyl, or tapes) may still be served on copyright owners or, if the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which the NOI can be served, filed with the Copyright Office, the same as
before enactment of the MMA; (2) NOIs pertaining to DPDs (e.g., permanent downloads, limited downloads, or interactive streams) may still be served on copyright owners until the license availability date, but not afterward, except in the case of a record company seeking an individual download license; and (3) NOIs pertaining to DPDs can no longer be filed with the Copyright Office under any circumstances. The definition of “digital phonorecord delivery” is also updated in the regulation to match the amended definition in the MMA.

Under the interim rule, the Office is not making any changes to the form, content, or manner of service for NOIs. In addition to the conforming amendments necessitated by the MMA, the Office is taking this opportunity to make two minor clarifying technical updates. First, the regulations previously stated that the Office does not provide forms to use for serving or filing NOIs, but since 2016, the Office has had a required form that must be used to file NOIs electronically with the Office. The interim rule acknowledges this electronic form. Second, the interim rule clarifies the Office’s current practice, as detailed in a 2017 policy statement, of charging a filing fee for so-called “returned-to-sender NOIs” submitted to the Office. Of course, both of these updates only apply to NOIs pertaining to phonorecords that are not DPDs.

B. Statements of Account

Under the interim rule, the Office is not making any amendments to the form, content, or manner of service for monthly or annual statements of account under subpart B of part 210 of the Office’s regulations. But the interim rule clarifies that on and after the license availability date, these regulations will not apply to any DPDs made under a compulsory license, unless they are made by a record company under an individual download license.

This means that the regulations will not apply to digital music providers reporting and paying royalties under a blanket license (such activity will be the subject of a separate, future rulemaking).

The interim rule also details the requirements for digital music providers to report and pay royalties regarding previously unmatched works for liability for making unauthorized DPDs during the transition period before the blanket license becomes available. As noted, once a digital music provider has identified and located a musical work copyright owner, the statute requires the provider to pay the copyright owner all accrued royalties accompanied by a cumulative statement of account that includes all of the information that would have been provided in monthly statements of account from the initial use of the work, had the copyright owner been previously identified and located. If the digital music provider has not located the musical work copyright owner by the license availability date, the accrued royalties and cumulative statement must be provided to the MLC. The interim regulations follow the statute, specifying that the digital music provider must pay royalties and provide cumulative statements under subpart B of part 210 as if they were a compulsory licensee. In providing these cumulative statements, the interim rule also requires digital music providers to identify the total period covered by the cumulative statement and the total royalty payable for the period. This addition is meant to assist the copyright owner or the MLC, as the case may be, to quickly ascertain the sum of the contents of the cumulative statement. As mandated by the MMA, the interim rule also requires that such cumulative statements include the certification required for monthly statements of account under Copyright Office regulations.

III. Request for Comments

These interim regulations will go into effect immediately after publication of this document in the Federal Register. Comments will be due 45 days thereafter. The Copyright Office is issuing these interim regulations after finding, for good cause, that notice and comment prior to their issuance would be contrary to the public interest. The changes to section 115 made by the MMA were effective on October 11, 2018, and this interim rule conforms the regulations to the new law and clarifies for the public the operation of the Office’s existing section 115-related regulations during the current transition period before the license availability date. The rule also must be issued without delay because it specifies the information to be contained in statements of account provided by digital music providers seeking to avail themselves of the limitation on liability available during this transition period. Moreover, the amendments made by this interim rule are meant to be technical in nature, as they are largely non-discretionary and merely make statutorily mandated modifications to existing rules.

The Copyright Office notes that this is only the first of what will be a number of rulemakings required by the MMA that concern the section 115 license. Over the next few months, the Office will be issuing additional notices to address other issues presented by the MMA, including the designation of the MLC and the filing by digital music providers of notices of license and reports of usage with the MLC under the blanket license. This interim rule, in contrast, does not cover the MLC or activity under the blanket license, and comments on such matters should not be submitted in response to it. Rather, comments submitted in response to this notice should be limited to the subjects of this interim rule. The Office looks forward to hearing from all who are interested in these important issues as the process continues.

List of Subjects

37 CFR Part 201
Copyright, General provisions.
37 CFR Part 203
Freedom of information.
PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:


2. Amend §201.18 as follows:
   a. Revise paragraphs (a)(1) and (2).
   b. In paragraph (a)(3):
      i. Remove “is each” and add in its place “means each”.
      ii. Remove “which results” and add in its place “that results”.
      iii. Remove “nondramatic”.
   c. In paragraph (a)(4) introductory text:
      i. Remove “A Notice of Intention shall” and add in its place “As eligible under paragraph (a)(2) of this section, a Notice of Intention shall”.
   d. In paragraph (a)(6), remove “Notwithstanding paragraph (a)(2) of this section, a” and add in its place “A”.
   e. Revise paragraph (c).
   f. In paragraph (d)(1)(iii), remove “(for example: a record company or digital music service)”.
   g. In paragraph (d)(1)(v)(D), remove “delivery, or” and add in its place “delivery (if eligible under paragraph (a)(2) of this section), or”.
   h. In paragraph (f)(1):
      i. Remove “If the” and add in its place “As eligible under paragraph (a)(2) of this section, if the”.
      ii. Remove the second sentence.
   i. In paragraph (f)(2):
      i. Remove “If the Notice is” and add in its place “If a Notice of Intention seeking a compulsory license to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery, a Notice must be served on the copyright owner or file with the Copyright Office, before, or not later than 30 calendar days after, making, and before distributing, any phonorecord of the work.
      ii. Notwithstanding paragraph (a)(2)(ii) of this section, an”.
   j. In paragraph (f)(3), remove “in a Notice of Intention seeking a compulsory license to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery is”. 
   k. Remove “accompanied by a” and add in its place “accompanied by the fee specified in §201.3(e) and a”.
   l. In paragraph (g), add three sentences at the end of the paragraph.

3. Amend §203.3 as follows:
   a. Remove paragraph (b)(2).
   b. Redesignate paragraph (b)(3) as paragraph (b)(2).
   c. Revise paragraphs (h) and (i).

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

3. The authority citation for part 203 continues to read as follows:

Authority: 5 U.S.C. 552.

4. Amend §203.3 as follows:
   a. Remove paragraph (b)(2).
   b. Redesignate paragraph (b)(3) as paragraph (b)(2).
   c. Revise paragraphs (h) and (i).

(h) The Copyright Modernization Office (“CMO”) is headed by the Director, who is the Register’s top advisor on Copyright Office modernization and oversees the development and implementation of technology initiatives affecting registration and recordation. This Office directs and coordinates all modernization activities on behalf of the
§ 210.12 [Amended]
8. Amend § 210.12 as follows:
   a. In paragraphs (a) and (b), remove "115(c)(5)" and add in its place "115(c)(2)(I)".
   b. In paragraph (c):
      i. Remove "is each" and add in its place "means each".
      ii. Remove "which results" and add in its place "that result".
      iii. Remove "nondramatic".
   c. Add two sentences at the end of the paragraph.

§ 210.12 Definitions.
   (c) * * * Notwithstanding the foregoing, a permanent download, a limited download, or an interactive stream, as defined in 17 U.S.C. 115(e), is a digital phonorecord delivery. A digital phonorecord delivery does not include the digital transmission of sounds accompanying a motion picture or other audiovisual work as defined in 17 U.S.C. 101.
   * * * * *
   (k) The term license availability date shall have the meaning given in 17 U.S.C. 115(e)(15).
   (l) The term digital music provider shall have the meaning given in 17 U.S.C. 115(e)(8).
   (m) The term blanket license shall have the meaning given in 17 U.S.C. 115(e)(5).
   (n) The term record company shall have the meaning given in 17 U.S.C. 115(e)(26).
   (o) The term individual download license shall have the meaning given in 17 U.S.C. 115(e)(12).

§ 210.16 [Amended]
9. Amend § 210.16(d)(3) by removing "115(c)(5)" and adding in its place "115(c)(2)(I)".

§ 210.19 [Amended]
10. Amend § 210.19 by removing "115(c)(6)" and adding in its place "115(c)(2)(I)".

11. Add §§ 210.20 and 210.21 to read as follows:

§ 210.20 Statements required for limitation on liability for digital music providers for the transition period prior to the license availability date.

This section specifies the requirements for a digital music provider to report and pay royalties for purposes of being eligible for the limitation on liability described in 17 U.S.C. 115(d)(10). Terms used in this section that are defined in 17 U.S.C. 115(e) shall have the meaning given these terms in 17 U.S.C. 115(e).

(a) If the required matching efforts are successful in identifying and locating a copyright owner of a musical work (or share thereof) by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall provide statements of account and pay royalties to such copyright owner as a compulsory licensee in accordance with this subpart.

(b) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

(1) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles.

(2) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall—

   (i) Not later than 45 calendar days after the end of the calendar month during which the copyright owner was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing Monthly Statements of Account as a compulsory licensee in accordance with this subpart to the copyright owner from initial use of the work, and including, in addition to the information and certification required by § 210.16, a clear identification of the total period covered by the cumulative statement and the total royalties payable for the period; and

   (ii) Beginning with the accounting period following the calendar month in
which the copyright owner was identified and located, and for all other accounting periods prior to the license availability date, provide Monthly Statements of Account and pay royalties to the copyright owner as a compulsory licensee in accordance with this subpart; and

(iii) Beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such reporting period and reporting periods thereafter to the mechanical licensing collective, as required under 17 U.S.C. 115(d) and applicable regulations.

(3) If a copyright owner of an unmatched musical work (or share thereof) is not identified and located by the license availability date, the digital music provider shall—

(i) Not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving Monthly Statements of Account as a compulsory licensee in accordance with this subpart on the copyright owner from initial use of the work, accompanied by a certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of 17 U.S.C. 115(d)(10)(B)(i) and (ii) but has not been successful in locating or identifying the copyright owner, and further including, in addition to the information and certification required by §210.16, a clear identification of the total period covered by the cumulative statement and the total royalty payable for the period; and

(ii) Beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under 17 U.S.C. 115(d) and applicable regulations.

§210.21 Record companies using individual download licenses.

A record company that obtains an individual download license under 17 U.S.C. 115(b)(3) shall provide statements of account and pay royalties as a compulsory licensee in accordance with this subpart.

Dated: November 30, 2018.

Karyn A. Temple, Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden, Librarian of Congress.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: moss.kenneth@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the Federal Register of October 10, 2018 (83 FR 50838) (FRL–9984–65). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

II. What direct final SNURs are being withdrawn?

In the Federal Register of October 10, 2018 (83 FR 50838) (FRL–9984–65), EPA issued direct final SNURs for 28 chemical substances that are identified in the document. Because the Agency received adverse comments regarding the SNURs identified in the document, EPA is withdrawing the direct final SNURs issued for these 28 chemical substances, which were the subject of PMNs. In addition to the Direct Final SNURs, elsewhere in the same issue of the Federal Register of October 10, 2018 (83 FR 50872) (FRL–9984–67), EPA issued proposed SNURs covering these 28 chemical substances. EPA will address all adverse public comments in a subsequent final rule, based on the proposed rule.

III. Good Cause Finding

EPA determined that this document is not subject to the 30-day delay of effective date generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) because of the time limitations for publication in the Federal Register. This document must publish on or before the effective date of the direct final rule containing the direct final SNURs being withdrawn.

IV. Statutory and Executive Order Reviews

This action withdraws regulatory requirements that have not gone into effect and which contain no new or amended requirements and reopens a comment period. As such, the Agency has determined that this action will not have any adverse impacts, economic or