after December 31, 2017 and before January 1, 2026. The proposed regulations also provide guidance on determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or non-grantor trust.

DATES: The public hearing is being held on Wednesday, August 12, 2020 at 10:00 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Wednesday, July 29, 2020. If no outlines are received by July 29, 2020, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–113295–18] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–113295–18. The email should also include a copy of the speaker's public comments and outline of topics. The email must be received by July 29, 2020.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–113295–18] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–113295–18. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–113295–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Margaret Burow, (202) 317–5279; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.* If emailing please put Attend, Testify, or Agenda Request and [REG–113295–18] in the email subject line.

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking REG–113295–18 that was published in the **Federal Register** on Monday, May 11, 2020, 85 FR 27693.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that submitted written comments by June 25, 2020, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by July 29, 2020.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, on *Regulations.gov*, search IRS and REG–113295–18, or by emailing your request to *publichearings@irs.gov.* Please put ''REG–113295–18 Agenda Request'' in the subject line of the email.

Martin V. Franks,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–15019 Filed 7–16–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1235–AA30

Family and Medical Leave Act of 1993

AGENCY: Wage and Hour Division, U.S. Department of Labor.

ACTION: Request for information.

SUMMARY: The Department of Labor (Department) is seeking information from the public regarding the regulations implementing the Family and Medical Leave Act of 1993 (FMLA or the Act). The Department is publishing this Request for Information (RFI) to gather information concerning the effectiveness of the current regulations and to aid the Department in its administration of the FMLA. The information provided will help the Department identify topics for which additional compliance assistance could be helpful, including opportunities for outreach to ensure employers are aware of their obligations under the law and employees are informed about their rights and responsibilities in using FMLA leave.

DATES: Submit written comments on or before September 15, 2020.

ADDRESSES: To facilitate the receipt and processing of written comments on this RFI, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA30, by either of the following methods:

Electronic Comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Address written submissions to Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This RFI is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *http://www.dol.gov/whd/.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA30) for this RFI. Response to this RFI is voluntary and respondents need not reply to all questions listed below. The Department requests that no business proprietary information, copyrighted information, individual medical information, or personally identifiable information be submitted in response to this RFI. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal or medical information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this RFI; comments received after the comment period closes will not be considered. Commenters should transmit comments

early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this RFI may be obtained in alternative formats (Large Print, braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889–5627 to obtain information or request materials in alternative formats.

Questions concerning enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or visit WHD's website at *http://www.dol.gov/whd/america2.htm* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

Administering the FMLA while responding to the COVID–19 public health emergency is an ongoing priority for the Department. Workplace flexibility ensured by job-protected leave is essential to American prosperity. Workers are more productive and more likely to remain employed if they do not have to choose between taking care of themselves or their loved ones and keeping their jobs. Likewise, businesses attract and retain the best talent when they give their workers flexibility that encourages productivity and retention.

In keeping with these principles, the FMLA, 29 U.S.C. 2601 *et seq.,* entitles eligible employees of covered employers to take up to a total of 12 workweeks of job-protected, unpaid leave, or to substitute accrued paid leave, during a 12-month period for the birth of the employee's child; for the placement of a child with the employee for adoption or foster care; to care for the newborn or newly-placed child; to care for the employee's spouse, parent, son, or daughter with a serious health condition; when the employee is unable to work due to the employee's own serious health condition; or for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty. *See* 29 U.S.C. 2612(a)(1). An eligible employee may also take up to 26 workweeks of FMLA leave during a ''single 12-month period'' to care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. *See* 29 U.S.C. 2612(a)(3).

FMLA leave may be taken in a block or, under certain circumstances, intermittently or on a reduced leave schedule. *See* 29 U.S.C. 2612(b). In addition to providing job-protected leave, employers covered by the law must maintain for the employee any preexisting group health coverage during the leave period and, once the leave period has concluded, reinstate the employee to the same or an equivalent job with equivalent employment benefits, pay, and other terms and conditions of employment. *See* 29 U.S.C. 2614.

The Department issued an initial interim final rule after the FMLA became law in 1993, 58 FR 31794, and issued final FMLA regulations in 1995, 60 FR 2180. The Department published significant revisions to the FMLA regulations in 2008, 73 FR 67934, which were informed, in part, by a 2006 Request for Information, 71 FR 69504. The Department next changed the FMLA regulations in 2013 to implement statutory amendments affecting military family leave provisions and airline flight crew eligibility. 78 FR 8834. The FMLA regulations were last updated in 2015 to update the definition of spouse. 80 FR 9989.[1]

On August 5, 2019, the Department published a **Federal Register** notice seeking public comment on proposed revisions to its optional-use FMLA forms. 84 FR 38061. The Department created forms—WH–380–E, WH–380–F, WH–381, WH–382, WH–384, WH–385, and WH–385–V—to assist employers and employees in meeting their FMLA notification and certification obligations. The Department's proposed revisions to the forms were based on feedback from employees, employers, and health care professionals and are designed to reduce administrative burden, increase compliance with regulatory requirements, and improve customer service. We received 139 comments from employers, industry associations, individual employees, worker advocacy groups, law firms, and other interested members of the public during the notice and comment process and made additional revisions to incorporate this feedback. Additional revisions to incorporate that feedback are in the process of being finalized.

The Department notes that the new Families First Coronavirus Response Act (FFCRA), Public Law 116–127 (Mar. 18, 2020), which was passed in response to the public health emergency caused by COVID–19 and ensures that workers are not forced to choose between their paychecks and the public health measures needed to combat the coronavirus, includes temporary amendments to the FMLA.[2] The amended FMLA protections provided under the FFCRA are not addressed in this Request for Information, and the Department does not seek comment on them here. The most up-to-date information about the FFCRA is available at *https://www.dol.gov/agencies/whd/ffcra.*

II. Request for Public Comment

The Department is aware that its regulations need to be regularly reviewed to explore how such regulations can remain current with workplace and demographic changes. Further, the Department understands the need for compliance assistance, in particular in the form of written informational materials that provide the public with up-to-date information about the protections and requirements of the law in plain language.

Extensive compliance assistance regarding the FMLA is currently

[1] Additionally, the Department has regularly sought employer and employee feedback on the administration and use of the FMLA through surveys designed to understand the range of perspectives on the FMLA in the U.S. The Department has commissioned four series of these surveys; the fourth is currently underway. Information about the Wave 4 FMLA surveys may be found at *https://www.dol.gov/asp/evaluation/currentstudies/Family-and-Medical-Leave-Act-Wave-4-Surveys.htm.* Further, the results from the prior Wave 3 FMLA survey (referred to as the 2012 FMLA survey elsewhere in this document) may be found at *https://www.dol.gov/asp/evaluation/completed-studies/Family_Medical_Leave_Act_Survey/TECHNICAL_REPORT_family_medical_leave_act_survey.pdf.*

[2] The FFCRA amended the FMLA to permit certain employees to take up to ten weeks of paid expanded family and medical leave if the employee is unable to work because the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID–19. This expanded family and medical leave entitlement, which became effective on April 1, 2020, will expire on December 31, 2020. The Department's regulations implementing paid leave under the FFCRA appear at 29 CFR part 826; all references in this document to FMLA regulations refer to those that appear at 29 CFR part 825.

available. In particular, the Department's FMLA web pages, which received more than 5 million views over the last year, contain a wealth of material including Frequently Asked Questions, Fact Sheets, Employee Guides, interactive online tools, and a comprehensive Employer's Guide developed for human resource managers and other leave administrators. Additionally, while the requirements of the FMLA are set by statute and regulations, as part of the administration of the Act, interested parties may seek an opinion (*i.e.,* an official written explanation) of what the FMLA requires in fact-specific situations. Opinion letters serve as an important means by which the public can develop a clearer understanding of what FMLA compliance entails. The Department has issued seven opinion letters [3] on FMLA-related topics since 2018.

Nevertheless, the results of employee and employer surveys continue to show an ongoing need for education and awareness in the administration and use of FMLA leave. Information from the public on what is and is not working well in the administration of the FMLA can further inform and guide the Department in issuing modernized tools to aid in understanding and applying the FMLA. As such, the Department seeks input from employers and employees on the current FMLA regulations, specifically:

- What would employees like to see changed in the FMLA regulations to better effectuate the rights and obligations under the FMLA?
- What would employers like to see changed in the FMLA regulations to better effectuate the rights and obligations under the FMLA?

The Department invites interested parties who have knowledge of, or experience with, the FMLA to submit comments, information, and data to provide a foundation for examining the effectiveness of the current regulations in meeting the statutory objectives of the FMLA. The Department suggests the following questions to frame the responses. These questions are not intended to be an exclusive list of issues for which the Departments seeks information.

1. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. *See* 29 U.S.C. 2611(11); 29 CFR 825.113–.115. The regulations outline several types of serious health conditions involving continuing treatment by a health care provider: (1) Incapacity and treatment, with specific definitions and time-frames for the incapacity and the treatment; (2) pregnancy or prenatal care; (3) chronic conditions, which require, among other things, at least two visits for treatment by a health care provider per year; (4) permanent or long-term conditions; and (5) conditions that require multiple treatments. *See* 29 CFR 825.115. Several opinion letters issued by the Wage and Hour Division address questions related to the definition of serious health condition. For example, FMLA2018–2–A, issued on August 28, 2018, clarified that organ donation can qualify as a serious health condition when it involves either inpatient care or continuing treatment as defined by the FMLA regulations. While information provided in the 2012 FMLA survey indicates that most employers report that complying with the FMLA imposes minimal burden on their operations, the Department is aware that the medical certification process used to support the existence of a serious health condition can, at times, present challenges to both employers and employees.

What, if any, challenges have employers and employees experienced in applying the regulatory definition of a serious health condition? For example, what, if any, conditions or circumstances have employers encountered that meet the regulatory definition of a ''serious health condition'' but that they believe the statute does not cover? What, if any, difficulties have employers experienced in determining when an employee has a chronic condition that qualifies as a serious health condition under the regulations? Conversely, what, if any, conditions or circumstances have employees experienced that they believe the statute covers, but which their employer determined did not meet the regulatory definition of ''serious health condition''? What, if any, difficulties have employees experienced in establishing that a chronic condition qualifies as a serious health condition under the regulations? The Department welcomes information that will further its understanding of FMLA serious health conditions so it can better effectuate the purposes of the Act.

2. An employee may take FMLA leave on an intermittent basis (*i.e.,* taking leave in separate blocks of time for a single qualifying reason) or on a reduced leave schedule (*i.e.,* reducing the employee's usual weekly or daily work schedule) due to his or her own serious health condition, to care for an immediate family member who has a serious health condition, or to care for a covered servicemember with a serious illness or injury when such leave is medically necessary. *See* 29 U.S.C. 2612(b); 29 CFR 825.202–.205. Information provided in the 2012 FMLA employer survey indicated that unscheduled leave, particularly unplanned intermittent or episodic leave, was sometimes disruptive to the workplace.

What, if any, specific challenges or impacts do employers and employees experience when an employee takes FMLA leave on an intermittent basis or on a reduced leave schedule? For example, what, if any, specific challenges do employers experience when the timing or need for intermittent leave is unforeseeable? Similarly, what, if any, challenges do employees seeking or taking intermittent leave or using a reduced leave schedule experience? For example, do employees find it difficult to request and use intermittent leave in their workplaces? The Department also seeks information from employers and employees on best practices and suggestions to improve implementation of these intermittent leave provisions. The Department welcomes information that will further its understanding of FMLA leave usage so it can better effectuate the purposes of the Act.

3. The requirements regarding the notice that an employee must provide to an employer of his or her need for FMLA leave are set out at 29 U.S.C. 2612(e) and 29 CFR 825.302–.304. An employee seeking to use FMLA leave is required to provide 30-days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable fewer than 30 days in advance, the employee must notify the employer as soon as practicable—generally, either the same or next business day. When the need for leave is not foreseeable, the employee must notify the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, an employee must comply with the employer's usual and customary notice

[3] FMLA2020–1–A (Jan. 7, 2020), available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2020_01_07_1A_FMLA.pdf;* FMLA2019–3–A (Sept. 10, 2019), available at *https://www.dol.gov/whd/opinion/FMLA/2019/2019_09_10_3A_FMLA.pdf;* FMLA2019–2–A (Aug. 8, 2019), available at *https://www.dol.gov/whd/opinion/FMLA/2019/2019_08_08_2A_FMLA.pdf;* FMLA2019–1–A (Mar. 14, 2019), available at *https://www.dol.gov/whd/opinion/FMLA/2019/2019_03_14_1A_FMLA.pdf;* FMLA2018–2–A (Aug. 28, 2018) available at *https://www.dol.gov/whd/opinion/FMLA/2018/2018_08_28_2A_FMLA.pdf;* FMLA2018–1–A (Aug. 28, 2018), available at *https://www.dol.gov/whd/opinion/FMLA/2018/2018_08_28_1A_FMLA.pdf;* FLSA2018–19 (Apr. 12, 2018), available at *https://www.dol.gov/whd/opinion/FLSA/2018/2018_04_12_02_FLSA.pdf.*

and procedural requirements for requesting leave. An employee must provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. When an employee seeks leave for an FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave due to an FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, however, the employee must specifically reference either the qualifying reason for the leave or the need for FMLA leave.

What, if any, specific challenges do employers and employees experience when employees request leave or notify their employers of their need for leave? For example, do employees convey sufficient information to notify employers that the employee may have an FMLA-qualifying reason for leave or that the employee is requesting FMLA leave? Similarly, are employees aware of and able to comply with their employers' specific procedural requirements for providing such notice? Are they aware of the specific information they need to provide? The Department welcomes suggestions of how to better assist employers and employees in understanding their rights and obligations under the FMLA regulations. The Department also specifically seeks input on additional tools the Department could provide to facilitate FMLA compliance.

4. An employer may require an employee to provide a certification issued by a health care provider to support the need for leave for a serious health condition of the employee or the employee's immediate family member. *See* 29 U.S.C. 2613; 29 CFR 825.305–.308. The employer must allow the employee at least 15 calendar days to obtain the medical certification. If the employer determines the certification is incomplete or insufficient, the employer must advise the employee in writing of the additional information needed and allow the employee a reasonable opportunity to cure the deficiency. *See* 29 CFR 825.305.

As noted above, the Department recently published in the **Federal Register** proposed revisions to the optional-use forms employers and employees may use to meet their FMLA notification and certification obligations. The Department is interested in understanding what, if any, challenges employers and employees have experienced with the medical certification process that are not addressed by those proposed revisions. For example, what, if any, challenges have employers encountered in determining whether a certification establishes that the employee or employee's immediate family member has a serious health condition under the FMLA and the amount of leave needed? Similarly, what, if any, challenges have employees encountered in obtaining a certification that contains sufficient information to establish the existence of a serious health condition and the amount of leave needed? The Department welcomes suggestions regarding strategies to address challenges with the certification process.

5. As indicated above, the Department has issued seven opinion letters on FMLA topics since 2018. The first, FLSA2018–19, issued on April 12, 2018, concerned the compensability of frequent 15-minute rest breaks under the Fair Labor Standards Act when the breaks are necessary due to a serious health condition under the FMLA and concluded that such short periods of FMLA-protected leave may be unpaid. The letter noted, however, that employees are entitled to compensation for rest periods of short duration on the same basis as co-workers who take non-FMLA leave breaks during a work shift. FMLA2018–1–A, issued on August 28, 2018, addressed an employer's no-fault attendance policy which effectively froze, throughout the duration of an employee's FMLA leave, the number of attendance points that the employee accrued prior to taking his or her leave. The letter concluded that such a policy does not violate the FMLA, provided it is applied in a nondiscriminatory manner. As noted above, FMLA2018–2–A, also issued on August 28, 2018, stated that organ donation can be a qualifying serious health condition if it requires inpatient care or continuing treatment as defined by the FMLA regulations.

Two letters addressed designation of FMLA leave. FMLA2019–1–A, issued on March 14, 2019, stated that an employer may not delay designating an employee's leave as FMLA leave if the circumstances qualify for FMLA leave, even if the employee prefers to delay the designation. The letter also stated that, while nothing prevents an employer from providing more generous leave policies than those established in the FMLA, doing so does not expand an employee's FMLA entitlement. Therefore, an employer may not designate more than 12 weeks of leave as FMLA leave. FMLA2019–3–A, issued on September 10, 2019, similarly stated that an employer may not delay designating an employee's leave as FMLA leave if the circumstances qualify for FMLA leave, in this case, even if a collective bargaining agreement provides that an employee may exhaust paid leave before using unpaid FMLA leave. However, the letter noted that the paid leave could be substituted (*i.e.,* run concurrently) with the FMLA leave. This letter also stated that if an employer provides for the accrual of seniority when employees use paid leave, it must also permit employees to accrue seniority when they substitute FMLA leave for paid leave. FMLA2019–2–A, issued on August 8, 2019, concluded that a parent's need to attend an Individualized Education Plan meeting addressing the educational and special medical needs of his or her child who has a serious health condition is a qualifying reason for taking intermittent FMLA leave. FMLA2020–1–A, issued on January 7, 2020, addressed whether a combined general health district must count the employees of the County in which it is located for purposes of determining employee eligibility to take FMLA leave.

The Department requests comments about whether it would be helpful to provide additional guidance regarding the interpretations contained in any of these opinion letters through the regulatory process.

6. Please provide specific information and any available data regarding other specific challenges that employers experience in administering FMLA leave or that employees experience in taking or attempting to take FMLA leave. The Department welcomes any information on the administration and effectiveness of the current regulations and suggestions regarding specific strategies to address such challenges. The Department also welcomes information concerning best practices employees and employers may have experienced in using or administering the FMLA.

III. Conclusion

The Department invites interested parties to submit comments and data during the public comment period and welcomes any pertinent information and data that will provide a basis for analyzing the effectiveness of the current regulations in meeting the statutory objectives of the FMLA.

List of Subjects in 29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

Signed at Washington, DC, this 6th day of July, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

[FR Doc. 2020–14873 Filed 7–16–20; 8:45 am]

BILLING CODE 4510–27–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–12]

Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding digital music providers' obligations to transfer and report accrued royalties for unmatched musical works (or shares) to the mechanical licensing collective for purposes of being eligible for the limitation on liability for prior unlicensed uses under title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. Having solicited public comments through multiple prior notices, the Office is now proposing an update to regulations concerning the transfer and reporting of such royalties, namely the content, format, and delivery of cumulative statements of account to be submitted by digital music providers to the mechanical licensing collective at the conclusion of the statutory transition period.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on August 17, 2020.

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-transition-reporting.* 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,* John R. Riley, Assistant General Counsel, by email at *jril@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

This notice of proposed rulemaking (''NPRM'') is being issued subsequent to a notification of inquiry, published in the **Federal Register** on September 24, 2019, that describes in detail the legislative background and regulatory scope of the present rulemaking proceeding.[1] The Copyright Office assumes familiarity with that document, and encourages anyone reading this NPRM who has not reviewed that notice to do so before continuing here.

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] It does so by switching from a song-by-song licensing system to a blanket licensing regime that will become available on January 1, 2021 (the ''license availability date''), and be administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office. Digital music providers (''DMPs'') will be able to obtain the new compulsory blanket license to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license), subject to compliance with various requirements.[3]

Prior to the MMA, DMPs obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (''NOI'') on the copyright owner (or filing it with the Copyright Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[4] The MMA includes a ''transition period'' for the period following the new law's enactment, before the blanket license becomes available.[5] During this transition period, anyone 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.[6] If the musical work copyright owner is unknown, a DMP may no longer file an NOI with the Copyright Office, but instead may rely on a limitation on liability that requires the DMP to ''continue[ ] to search for the musical work copyright owner'' using good-faith, commercially reasonable efforts and bulk electronic matching processes.[7] The DMP 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.[8] Congress believed that the liability limitation, which limits recovery in lawsuits commenced on or after January 1, 2018 to the statutory royalty due, would ''ensure that more artist royalties will be paid than otherwise would be the case through continual litigation'' [9] and viewed this provision as a ''key component that was

[1] 84 FR 49966 (Sept. 24, 2019). All rulemaking activity, including public comments, as well as legislative history and educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001.* Related *ex parte* letters are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* References to these comments and letters are by party name (abbreviated where appropriate), followed by ''Initial,'' ''Reply,'' or ''*Ex Parte* Letter'' as appropriate.

[2] Public Law 115–264, 132 Stat. 3676 (2018).

[3] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[4] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017).

[5] H.R. Rep. No. 115–651, at 10 (2018); S. Rep. No. 115–339, at 10 (2018).

[6] 17 U.S.C. 115(b)(2)(A), (c)(2)(I); *see* H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 3.

[7] 17 U.S.C. 115(b)(2)(A), (d)(9)(D)(i), (d)(10)(A)–(B); *see* H.R. Rep. No. 115–651, at 4, 10; S. Rep. No. 115–339, at 3, 10, 22.

[8] 17 U.S.C. 115(d)(10)(B); *see* H.R. Rep. No. 115–651, at 4, 10; S. Rep. No. 115–339, at 3, 10.

[9] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 14–15; Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 12 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'').