Marine Corps Reserve: Director, Marine Corps Individual Reserve Support Activity (MCIRSA), 2000 Opelousas Ave., New Orleans, LA 70114, *https://www.marforres.marines.mil/Major-Subordinate-Commands/Force-Headquarters-Group/Marine-Corps-Individual-Reserve-Support-Activity/*

Air Force Reserve: Commander, Air Reserve Personnel Center/DPAM, 18420 E. Silver Creek Ave., Bldg. 390, MS 68, Buckley AFB, CO 80011, *https://www.arpc.afrc.af.mil/*

Coast Guard Reserve: Commander (PSC–RPM), U. S. Coast Guard Personnel Service Center, 2703 Martin Luther King Jr Ave. SE, Stop 7200, Washington, DC 20593–7200, *https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Personnel-Service-Center-PSC/Reserve-Personnel-Management-PSC-RPM/*

Army and Air National Guard: Submit petitions to the Adjutant General of the appropriate State, Territory, or the District of Columbia.

Dated: December 21, 2020.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–28646 Filed 12–22–20; 4:15 pm]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–5]

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

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

ACTION: Supplemental interim rule with request for comments.

SUMMARY: The U.S. Copyright Office is amending its regulations governing certain reporting requirements of digital music providers and significant nonblanket licensees pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. This amendment will create a temporary exception to certain provisions concerning the reporting of information about permanent download pass-through licenses in light of recent requests that an accommodation to current reporting rules be made to avoid potential market disruption. Based on these requests received following the adoption of the current requirements, the Copyright Office has determined that there is a legitimate need to make this amendment effective immediately to govern these matters while it considers further potential adjustments. The Copyright Office solicits public comment on how, or whether, it should further adjust these particular reporting requirements.

DATES: The supplemental interim rule is effective December 28, 2020. Written comments must be received no later than 11:59 p.m. Eastern Time on January 27, 2021.

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-notices-reports/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Copyright 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,* Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov,* or Cassandra G. Sciortino, Attorney-Advisor, by email at *csciortino@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'') 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.[1] 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 will be administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office (the ''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, including reporting obligations.[2] DMPs may also continue to engage in those activities solely through voluntary, or direct, licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee (''SNBL'') under the statute, subject to separate reporting obligations.

On September 17, 2020, the Office issued an interim rule adopting regulations concerning certain types of reporting required under the statute after the license availability date: Notices of license and reports of usage by DMPs, and notices of nonblanket activity and reports of usage by SNBLs.[3] Those interim regulations include requirements to report certain information about certain permanent download licenses.[4] They were adopted to help ensure that the MLC receives sufficient information to be able to fulfill its statutory obligations, including under section 115(d)(3)(G)(i)(I)(bb), and to effectuate the reporting requirements of section 115(d)(4)(A)(ii)(II). The Office assumes familiarity with the interim rule and all related **Federal Register** documents.

After the adoption of these rules, which involved multiple rounds of public comments through a notification of inquiry,[5] notice of proposed rulemaking,[6] and an *ex parte* communications process,[7] the DLC raised a new concern with respect to the applicability of these particular reporting provisions to ''pass-through'' licenses for permanent downloads.[8] The DLC explained that ''all [DMPs operating] download stores operate exclusively under so-called 'pass-through' licenses received from record labels, where the label obtains the

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

[2] 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 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).

[3] 85 FR 58114 (Sept. 17, 2020).

[4] 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5).

[5] 84 FR 49966 (Sept. 24, 2019).

[6] 85 FR 22518 (Apr. 22, 2020).

[7] Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.*

[8] *See* DLC *Ex Parte* Letter Nov. 10, 2020 at 4–7.

mechanical licenses from musical work copyright owners and then authorizes downstream distributors to make and distribute permanent downloads.'' [9] The Office notes that this reflects that the scope of ''pass-through'' licensing under section 115 shrank under the MMA, which eliminated the ability of record labels to ''pass-through'' section 115 licenses for streaming or limited downloads.[10]

The underlying mechanical license pursuant to which the DMP has been given authority for permanent downloads by a record label can be a compulsory license or a voluntary license. Under the MMA, the compulsory version is defined as an ''individual download license,'' which is ''a compulsory license obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work.'' [11] The non-compulsory version (a ''voluntary pass-through license'') does not appear to be directly addressed by the MMA, but in general the MMA provides for preexisting voluntary licenses to remain in effect after the license availability date.[12]

The DLC raised the concern that the relevant reporting requirements set forth in the interim regulations require DMPs and SNBLs operating under the authority of pass-through licenses to report certain information about such licenses, including identification and contact information for relevant musical work copyright owners that they do not have.[13] The DLC stated that:

> This information is not provided by record labels to download stores through existing reporting mechanisms . . . and for this to occur would require record labels and digital music providers to invest resources to build entirely new systems. The reality is that services are not likely to make those investments, especially because purchases of permanent downloads, while still significant, are declining. It is far more likely that download stores would simply cease operations.[14]

The DLC submitted proposed regulatory amendments to address their concerns, which the MLC does not object to.[15] The MLC and DLC are in agreement that ''allowing the existing rules to go into effect without alteration would cause market disruption for permanent download offerings.'' [16] The DLC's proposal is available in Addendum B of the *ex parte* letter available at: *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte/mlc-and-dlc.pdf.*

II. Supplemental Interim Rule and Request for Comments

The Office tentatively agrees that this issue needs to be addressed and is therefore noticing the matter for public comment. In the meantime, the Office finds it necessary and appropriate under its authority pursuant to 17 U.S.C. 115 and 702 to adjust the interim rule, effective immediately, to prevent potential market disruption that the MLC and DLC are concerned about occurring while the Office solicits comments and continues to consider how best to proceed with respect to this issue.[17] The supplemental interim rule creates a temporary exception to the previously adopted reporting requirements with respect to individual download licenses and voluntary pass-through licenses, such that the failure to report that particular information will not otherwise impact a DMP's or SNBL's compliance with their various requirements under the MMA and the Office's related regulations (*e.g.,* the MLC cannot use the failure to provide that particular information as a basis to reject an otherwise compliant notice of license or serve a notice of default on an otherwise compliant blanket licensee). The supplemental interim rule further provides that after the temporary exception is no longer in effect, the MLC can take action against a DMP or SNBL who benefitted from the exception if any amended reporting requirements adopted by the Office are not complied with by the DMP or SNBL within 45 days after the effective date of such an amendment (or an alternate date subsequently adopted by the Office, whichever is later). The MLC and DLC indicated that they respectively do not oppose the Office employing this approach while considering this matter.[18]

With respect to the DLC's concerns, the Office solicits comments on the DLC's proposal. As the Office understands it, the proposal would basically exempt individual download licenses and voluntary pass-through licenses from the relevant reporting requirements under the interim regulations, and would instead impose alternative requirements that the DLC views as more appropriate but that still ensure that the MLC has sufficient information to fulfill its statutory duties. In particular, the Office seeks comments regarding its authority to adopt the DLC's proposal in light of 17 U.S.C. 115(d)(4)(A)(ii)(II), which requires DMPs to ''identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported.'' While the DLC argues that the statute is ''at least . . . ambiguous'' and that the Office can ''exercise its general regulatory authority to clarify this issue,'' [19] the Office is cautious about potentially concluding that the term ''voluntary license'' in that provision excludes voluntary pass-through licenses, and thus seeks further comments to aid its statutory analysis.[20] Relatedly, the Office seeks comments as to whether there are any concerns, as a matter of statutory interpretation, with interpreting the term ''voluntary license'' in section 115(d)(4)(A)(ii)(II) in the manner the DLC requests while reading the same term more broadly elsewhere in section 115, such as in the introductory paragraph of section 115(d)(4)(A)(ii).

The Office seeks clarification from the MLC and DLC, and comments from other interested stakeholders, regarding their proposed inclusion of language seeming to qualify the proposed exceptions to ''where [the DMP's] authority applies to the exclusion of the blanket license authority pursuant to 17

[9] *Id.* at 4.

[10] *See* H.R. Rep. No. 115–651, at 4 (2018) (''Subsection (b)(3) maintains the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads. Under the Music Modernization Act, a record label will no longer be eligible to obtain and pass through a Section 115 license to a digital music provider to engage in activities related to interactive streams or limited downloads.''); S. Rep. No. 115–339, at 4 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 3 (2018), *https://www.copyright.gov/legislation/_conference_report.pdf;* U.S. Copyright Office, *Copyright and the Music Marketplace* at 27–28 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing previous pass-through licensing practices).

[11] 17 U.S.C. 115(e)(12).

[12] *See id.* at 115(d)(9)(C).

[13] DLC *Ex Parte* Letter Nov. 10, 2020 at 4–6.

[14] *Id.* at 5–6.

[15] DLC & MLC *Ex Parte* Letter Dec. 9, 2020 at 4, add. B.

[16] *Id.* at 4.

[17] Because of the short amount of time remaining before the January 1, 2021 license availability date, the Office finds there is good cause to adopt the temporary supplemental interim rule without public notice and comment, and to make it effective immediately upon publication. *See* 5 U.S.C. 553(b)(3)(B), (d)(3); *see also* DLC & MLC *Ex Parte* Letter Dec. 9, 2020 at 4 (supporting adoption of a temporary rule while the Office further considers this issue and agreeing that ''allowing the existing rules to go into effect without alteration would cause market disruption for permanent download offerings'').

[18] DLC & MLC *Ex Parte* Letter Dec. 9, 2020 at 4.

[19] DLC *Ex Parte* Letter Nov. 10, 2020 at 6–7.

[20] A ''voluntary license'' is a defined term under 17 U.S.C. 115(e)(36).

U.S.C. 115(d)(1)(C)(i).'' [21] This proposed language seems to suggest that the DLC and MLC believe there are types of voluntary licenses, authorizing DMPs to make and distribute permanent downloads, that would *not* apply to the exclusion of the blanket license. It is not entirely clear to the Office what is meant by this aspect of the proposal, but the Office observes that section 115(d)(1)(C) says ''[a] voluntary license for covered activities entered into by or under the authority of 1 or more copyright owners and 1 or more digital music providers, or authority to make and distribute permanent downloads of a musical work obtained by a digital music provider from a sound recording copyright owner pursuant to an individual download license, shall be given effect in lieu of a blanket license under this subsection with respect to the musical works (or shares thereof) covered by such voluntary license or individual download authority.'' [22]

Beyond the DLC's proposal, the Office invites comments more generally on how to address, or whether the Office should address, the pass-through license issue that has been raised, including whether a different approach should be taken. One potential alternative approach the Office seeks comment on could be for the Office to adopt a rule providing that any failure to comply with the previously adopted reporting requirements in 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), or 210.28(c)(5) with respect to individual download licenses or voluntary pass-through licenses may not be construed as material noncompliance with the statute or regulations, but rather would be considered to be harmless errors, if appropriate alternative information—perhaps the information the DLC proposed—is timely reported instead. This would mean that in such cases, the harmless error provisions in place for notices of license (§ 210.24(e)), notices of nonblanket activity (§ 210.25(e)), and SNBL-submitted reports of usage (§ 210.28(k)) would apply to protect the DMP or SNBL; the statutory default provision in 17 U.S.C. 115(d)(4)(E)(i)(III) would similarly protect a DMP from being in default under the blanket license with respect to its reports of usage.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

[21] *See* DLC & MLC *Ex Parte* Letter Dec. 9, 2020 add. B at 2, 3, 10.

[22] 17 U.S.C. 115(d)(1)(C).

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Add § 210.30 to read as follows:

§ 210.30 Temporary exception to certain reporting requirements about certain permanent download licenses.

(a) Subject to paragraph (b) of this section, where a requirement of § 210.24(b)(8), § 210.25(b)(6), § 210.27(c)(5), or § 210.28(c)(5) has not been satisfied with respect to an individual download license or voluntary pass-through license, such failure shall not:

(1) Render an otherwise compliant notice of license, notice of nonblanket activity, or report of usage invalid; or

(2) Provide a basis for the mechanical licensing collective to reject an otherwise compliant notice of license, serve a notice of default on an otherwise compliant blanket licensee, terminate an otherwise compliant blanket license, or engage in legal enforcement efforts against an otherwise compliant significant nonblanket licensee.

Note 1 to paragraph (a): Paragraph (a) of this section is a transitional exception that shall cease to apply in accordance with such further regulations as the Copyright Office may adopt.

(b) After paragraph (a) of this section is no longer applicable, the mechanical licensing collective may take such action(s) against a beneficiary of paragraph (a) of this section as had been prohibited by paragraph (a) when it was applicable, if an amendment adopted by the Copyright Office to a requirement of § 210.24(b)(8), § 210.25(b)(6), § 210.27(c)(5), or § 210.28(c)(5) with respect to individual download licenses or voluntary pass-through licenses is not complied with by such a beneficiary within 45 calendar days after the effective date of such an amendment, or an alternate date subsequently adopted by the Office, whichever is later. Any deadline otherwise applicable to any such action by the mechanical licensing collective shall be tolled with respect to a beneficiary of paragraph (a) of this section until the conclusion of such 45-day or alternate period.

(c) For purposes of this section, a *voluntary pass-through license* is a voluntary license obtained by a licensor of sound recordings to make and distribute, or authorize the making and distribution of, permanent downloads embodying musical works through which a digital music provider or significant nonblanket licensee has obtained authority from such licensor of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings.

Dated: December 16, 2020.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–28505 Filed 12–23–20; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP46

Prosthetic and Rehabilitative Items and Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rulemaking adopts as final, with changes, proposed amendments to VA's regulations governing the provision of prosthetic and rehabilitative items and services as medical services to veterans. This rulemaking establishes a new section for the provision of prosthetic and rehabilitative items and services, clarifies eligibility for such items and services, and defines the types of prosthetic and rehabilitative items and services available to eligible veterans.

DATES: This rule is effective on January 27, 2021.

FOR FURTHER INFORMATION CONTACT: Penny Nechanicky, National Program Director for Prosthetic and Sensory Aids Service (10P4RK), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *penny.nechanicky@va.gov;* (202) 461–0337. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On October 16, 2017, VA published a proposed rule in the **Federal Register** (82 FR 48018) to revise VA's regulations governing the provision of prosthetic and rehabilitative items and services to eligible veterans. The proposed rule set forth revisions to reorganize and update