Okeechobee Waterway, mile 28.2, at Indiantown, Florida. The bridge owner requested to start the three hour advance notice for an opening earlier each evening and end it one hour later each morning. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these proposed changes.

DATES: This deviation is effective without actual notice from March 5, 2021 through 11:59 p.m. on August 27, 2021. For the purposes of enforcement, actual notice will be used from 1 a.m. on March 1, 2021 until March 5, 2021.

Comments and related material must reach the Coast Guard on or before April 29, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0099 using Federal eRulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email L.T. Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose, and Legal Basis

The Seaboard System Railroad Bridge across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida is a swing bridge with a seven foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.317(e). Navigation on the waterway is commercial and recreational.

The bridge owner, CSX Transportation, requested that vessels provide a three hour advance notification for a bridge opening during the evening and overnight hours. The three hour advance notification would align with the operating schedule of the U.S. Army Corps of Engineers (USACE) Locks along this portion of the Okeechobee Waterway. After reviewing the draw tender logs, the Coast Guard determined that allowing the bridge to change the start and end times for the advance notice may meet the reasonable needs of navigation.

Under this test deviation, the draw shall open on signal, except that from 7 p.m. to 7 a.m. the draw shall open if at least a three hour advance notice is given. Advance openings can be arranged by contacting CSX Transportation at 1–850–209–9528.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this test deviation as being available in this docket and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Dated: February 25, 2021.

Randall D. Overton,

Director, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 2021–04552 Filed 3–4–21; 8:45 am]

BILLING CODE 9110–04–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.

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 adjusts provisions concerning the reporting of information about permanent download pass-through licenses in light of recent requests for accommodations to avoid potential market disruption.

DATES: Effective April 5, 2021.

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 at (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 became available on January 1, 2021 (the ''license availability date''), administered by a mechanical licensing

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

collective (''MLC'') designated by the Copyright Office (the ''Office''). Digital music providers (''DMPs'') are 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 (the ''September 2020 rule'').[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).

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 mechanical licenses from musical work copyright owners and then authorizes downstream distributors to make and distribute permanent downloads.'' [9] The Office notes that this focus on permanent downloads reflects that the scope of ''pass-through'' licensing under section 115 was diminished 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 either compulsory or voluntary. 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 blanket license availability date.[12]

The DLC raised the concern that the relevant reporting requirements set forth in the September 2020 rule 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, to which the MLC did not object.[15] The MLC and DLC agreed that ''allowing the existing rules to go into effect without alteration would cause market disruption for permanent download offerings.'' [16]

In response, on December 28, 2020, the Office issued a supplemental interim rule with request for comments (the ''December 2020 rule'').[17] In the December 2020 rule, the Office tentatively agreed that the issue needed to be addressed and noticed the matter for public comment. It adjusted the September 2020 rule, effective immediately, to prevent the potential market disruption that the MLC and DLC were concerned about while the Office solicited comments and continued to consider how best to proceed with respect to the issue. Specifically, the December 2020 rule created 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 information about these licenses 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 December 2020 rule further provided 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 their effective date (or an alternate date subsequently adopted by

[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 at 4–7 (Nov. 10, 2020).

[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/mma/_conference_report.pdf* (''Conf.Rep.''); 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 at 4–6 (Nov. 10, 2020).

[14] *Id.* at 5–6.

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

[16] *Id.* at 4.

[17] 85 FR 84243 (Dec. 28, 2020).

the Office, whichever is later). The MLC and DLC indicated that neither of them opposed the Office employing this approach.[18]

With respect to the DLC's concerns, the Office solicited comments on the DLC's proposal, which would exempt individual download licenses and voluntary pass-through licenses from the relevant reporting requirements under the September 2020 rule, and would instead impose alternative requirements that the DLC views as more appropriate and feasible for DMPs to comply with in light of the information they typically receive from record labels, but that still ensure that the MLC has sufficient information to fulfill its statutory duties. The Office specifically sought comments regarding its authority to adopt the DLC's proposal, and invited comments more generally on how to address, or whether the Office should address, the pass-through license issue, including whether a different approach should be taken.

The Office received responsive comments from the DLC, MLC, and the Alliance for Recorded Music (''ARM''), all agreeing that the issue should be addressed, that the DLC's proposed solution should be adopted, and that the Office has the authority to do so.[19] Having reviewed and considered all relevant comments in the record, the Office concludes that it is necessary and appropriate under its authority pursuant to 17 U.S.C. 115 and 702 to further adjust the current interim rule to address the concerns that have been raised.[20] The Office further finds the DLC's unopposed proposal to be a reasonable approach that is within the Office's authority to adopt; thus, it is being implemented with only minor modifications, discussed below.

II. Supplemental Interim Rule

The DLC's comments reiterate the concerns it previously raised:

> The existing reporting regulations require permanent download services operating under the authority of 'voluntary pass-through licenses' to report information that they do not know—in particular, the identity and contact information for copyright owners of the musical works embodied in sound recordings. That is because musical work copyright owners issue voluntary pass-through licenses not to digital services, but to *record labels,* on the understanding that they will pass through the authority to make and distribute permanent downloads to downstream services. Record labels do pass on this authority but do not today report such identity and contact information to services through existing data feeds. Given that permanent downloads represent a diminishing (even if still significant) share of the market, labels and services will probably not invest in those reporting systems.[21]

ARM confirms that ''[d]ownload stores . . . are still a significant contributor to the recorded music industry's revenues,'' contributing ''nearly $1 billion (*i.e.,* $856 million) in annual revenues'' as of 2019.[22] ARM seconds the DLC's assertions that ''[a]bsent a change in the interim rule to address this problem, 'download stores would simply cease operations' rather than investing the resources to build entirely new systems to collect and report the necessary information,'' adding that ''[g]iven the revenue figures cited above, any such decision by the operators of download stores would be extremely damaging to artists and labels alike.'' [23] The MLC also ''understands that the market for permanent downloads faces significant disruption if DMPs operating download stores under pass-through mechanical licenses are required to identify and provide contact information for each respective musical work copyright owner in order to have those pass-through licenses recognized by the MLC and carved out from the blanket license.'' [24] The Office agrees that the relevant reporting requirements adopted by the September 2020 rule should be adjusted in light of this additional information to avoid any such potential harm or disruption to the permanent download market, especially given that the MLC does not object that doing so may impede its ability to properly administer the blanket license.

The September 2020 rule required DMPs and SNBLs to report certain information about applicable voluntary licenses and individual download licenses, including the identity and contact information for the musical work copyright owners for works subject to such licenses.[25] The DLC's proposed solution is to exempt pass-through licenses—both individual download licenses and voluntary pass-through licenses—from these reporting requirements, and instead impose alternative reporting requirements pursuant to which DMPs and SNBLs must either indicate reliance on pass-through licenses for all of their permanent downloads or provide a list of all sound recordings covered by pass-through licenses, or provide a list of any applicable catalog exclusions where it is indicated that authority otherwise exists for all permanent downloads.[26] The MLC does not oppose this proposal and states that ''[w]ith respect to the practical viability of the DLC Proposal, the MLC believes that it can effectively and efficiently administer the blanket license with the reporting adjustments in the proposal.'' [27]

This proposal strikes the Office as reasonable in light of the concerns raised following the adoption of the September 2020 rule and the MLC's statements that the proposed alternative information to be reported will be sufficient for it to effectively and efficiently administer the blanket license. The remaining question is whether the Office has the authority under the MMA to adopt the proposal. In the notice soliciting comments that accompanied the December 2020 rule, the Office said that 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.'' [28] The Office said that 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,'' 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.[29] The Office said that relatedly, it seeks comments as to whether there are any concerns, as a matter of statutory interpretation, with

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

[19] *See* DLC Supplemental Interim Rule Comment at 1–4; MLC Supplemental Interim Rule Comment at 2–4; ARM Supplemental Interim Rule Comment at 1–3.

[20] *See* 17 U.S.C. 702, 115(d)(4)(A)(ii)(III), 115(d)(12)(A); *see also* H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12; *Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005).

[21] DLC Supplemental Interim Rule Comment at 1; *see* ARM Supplemental Interim Rule Comment at 2 n.1 (''Under this arrangement, it is the record labels—not the download stores—that are responsible for providing reports of use to the musical work copyright owners.'').

[22] ARM Supplemental Interim Rule Comment at 1.

[23] *Id.* at 2 (quoting DLC & MLC *Ex Parte* Letter at 4 (Dec. 9, 2020)).

[24] MLC Supplemental Interim Rule Comment at 2.

[25] 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5).

[26] DLC & MLC *Ex Parte* Letter at 4, add. B at 2–4, 7, 10, 28–29 (Dec. 9, 2020); *see* DLC Supplemental Interim Rule Comment at 1; MLC Supplemental Interim Rule Comment at 2 (stating that this would ''continue the industry practice of identifying pass-through licenses by reference to the sound recordings'').

[27] MLC Supplemental Interim Rule Comment at 3.

[28] 85 FR at 84244.

[29] *Id.*

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).[30] In response, the DLC and ARM put forward several legal arguments supporting the Office's authority.[31] While the Office does not necessarily agree on every point asserted, the Office ultimately concurs that the DLC's proposal is not contrary to the statute and that the Office has the authority to adopt it (and that as a matter of policy, it is appropriate to do so in light of the unanimous public comments in support of the proposal).

Specifically, the Office has analyzed the interrelationships among sections 115(d)(3)(G)(i)(I)(bb), 115(d)(4)(A)(ii), 115(d)(4)(A)(ii)(I)(bb), and 115(d)(4)(A)(ii)(II), which address the MLC's obligations and DMP reporting requirements with respect to voluntary licenses and individual download licenses.[32] Under section 115(d)(3)(G)(i)(I)(bb), the MLC has a duty to ''confirm uses of musical works subject to voluntary licenses *and individual download licenses,* and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license.'' [33] And pursuant to the introductory paragraph of section 115(d)(4)(A)(ii), DMPs, in reporting to the MLC, must ''provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses *and individual download licenses*.'' [34] But under section 115(d)(4)(A)(ii)(II) (one of multiple subparts providing further specificity under this introductory paragraph), DMPs are required to report musical work copyright owner identity and contact information only 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.'' [35] Individual download licenses are conspicuously absent from this subpart, although the introductory paragraph of section 115(d)(4)(A)(ii) requires reporting of usage data under these licenses and the MLC must receive at least some sort of information about these licenses in order to be able to carry out its obligations under section 115(d)(3)(G)(i)(I)(bb). This suggests the Office should specify the information required to be reported with respect to individual download licenses pursuant to section 115(d)(4)(A)(ii)(III), which requires DMPs to ''provide such other information as the Register of Copyrights shall require by regulation,'' [36] in addition to the Office's general authority under section 115(d)(12)(A).

With respect to section 115(d)(4)(A)(ii)(II)'s usage of the phrase ''voluntary license,'' when read against these other provisions and the overall licensing framework, the Office believes this phrase is best read as referring only to voluntary licenses that DMPs have entered into directly with musical work copyright owners (or their agents), leaving a reporting gap for voluntary pass-through licenses for which the Office should detail requirements by regulation. By requiring identity and contact information for the relevant musical work copyright owners and omitting reference to individual download licenses, the provision implies a direct relationship between DMPs and the musical work copyright owners that does not exist with pass-through licenses. As the DLC notes, not only do DMPs not have this information, they often do not even know if the relevant pass-through licenses are voluntary or compulsory because that license belongs to the record label.[37] If Congress had meant for this provision to cover voluntary pass-through licenses, it would have likely included a reference to individual download licenses as well; there does not seem to be any reason to distinguish between them for reporting purposes.[38]

If the provision were read to include voluntary pass-through licenses, DMPs would have to obtain the relevant information from the sound recording copyright owners or licensors that have the direct relationship with the musical work copyright owners, but nothing in the statute compels them to provide such information to DMPs. Such a requirement would also be in tension with section 115(d)(4)(A)(ii)(I)(bb), which requires DMPs to report musical work copyright owner information for the musical works embodied in reported sound recordings only ''to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities.'' [39]

Additionally, the MMA's definition of ''voluntary license'' is very broad: ''A license for use of a musical work (or share thereof) other than a compulsory license obtained under this section.'' [40] Especially given that this definition is not even limited to covered activities, examining the context of the provision in which the term appears is critical. Here, as the foregoing shows, it is clear from reading the whole of section 115(d)(4)(A)(ii) together in context that section 115(d)(4)(A)(ii)(II) is meant to be referring to voluntary licenses for covered activities that are not pass-through licenses. This is in contrast, for example, to the introductory paragraph of section 115(d)(4)(A)(ii) where it is obviously meant to more broadly refer to both direct voluntary licenses *and* voluntary pass-through licenses.

This result is consistent with Congress's expressed intent to ''maintain[ ] the 'pass-through' license for record labels to obtain and pass through mechanical license rights for individual permanent downloads.'' [41] Reading the statute in a way that frustrates the continuation of download stores or pass-through licensing for permanent downloads would be contrary to Congress's wishes.

Accordingly, the Office has adopted the proposal with a minor modification. The Office is omitting the qualifying phrase ''where such authority applies to the exclusion of the blanket license authority pursuant to 17 U.S.C.

[30] *Id.*

[31] DLC Supplemental Interim Rule Comment at 2–4; ARM Supplemental Interim Rule Comment at 2–3.

[32] While the first two provisions expressly refer to both voluntary licenses and individual download licenses, the third does not explicitly refer to either, and the fourth only mentions voluntary licenses.

[33] 17 U.S.C. 115(d)(3)(G)(i)(I)(bb) (emphasis added).

[34] *Id.* at 115(d)(4)(A)(ii) (emphasis added).

[35] *Id.* at 115(d)(4)(A)(ii)(II).

[36] *See id.* at 115(d)(4)(A)(ii)(III).

[37] DLC *Ex Parte* Letter at 5 (Nov. 10, 2020) (''[D]ownload stores are not even aware when a label is relying on a compulsory license and when it is relying on a voluntary variant thereof. Nor have they ever received contact information for musical work copyright owners from record labels.''); DLC Supplemental Interim Rule Comment at 3 (''[I]t would be unusual for a service to have contact information for a musical work copyright owner with whom it has no direct contractual relationship.'').

[38] In adopting the September 2020 rule, and in the absence of any contrary comments at that time, the Office had read the provision as inadvertently omitting individual download licenses, and so adopted regulations requiring reporting of copyright owner identity and contact information for both voluntary licenses and individual download licenses. *See* 37 CFR 210.24(b)(8), 210.25(b)(6), 210.27(c)(5), 210.28(c)(5). While that interpretation is also reasonable, in light of the DLC's post-issuance comments about that approach, the Office now finds it more persuasive that the omission of individual download licenses was intentional, and that, instead, this provision simply did not specify that it was not intended to apply to voluntary pass-through licenses.

[39] *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(bb).

[40] *Id.* at 115(e)(36).

[41] *See* H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 4; Conf. Rep. at 3.

115(d)(1)(C)(i)'' from each place where it appears in the proposal.[42] The DLC characterized the language as ''simply reiterat[ing] the principle expressed in section 115(d)(1)(C)(i),'' and the MLC said it ''sees this language to be in the nature of 'for the avoidance of doubt' language.'' [43] The MLC explained that the reason for the language is ''so that DMPs understand clearly that where they identify pass-through licenses at the sound recording level, then their blanket license coverage is also excluded at the sound recording level.'' [44] The MLC noted that ''if the Office was to clarify that operation of voluntary license identification elsewhere, then the queried language would be less important.'' [45]

In light of these points, the proposed language appears to be unnecessary. It also seems somewhat ambiguous, and could potentially be construed as suggesting that there may be types of voluntary licenses authorizing DMPs to make and distribute permanent downloads that do *not* apply to the exclusion of the blanket license, which the MLC and DLC state is not the intention of the language.[46] To clarify, as the MLC requests, the Office accepts the common sense reading of section 115(d)(1)(C)(i) that musical works (or shares thereof) are only excluded from the blanket license *to the extent* ''a voluntary license or individual download license applies.'' [47] In other words, the scope of the exclusion from the blanket license corresponds to the scope of the alternative license authority. For example, a pass-through license for making permanent downloads of a particular sound recording of a musical work would only exclude the musical work as embodied in that specific sound recording and used in that specific DPD configuration; it would not exclude the musical work as embodied in other sound recordings or as used in other DPD configurations (like interactive streams) that are not part of that pass-through license authority (which could be separately excluded by other licenses).

The DLC's proposal also included a provision that ''explicitly acknowledges that the MLC may report to copyright owners regarding usage of their musical works that a DMP identified as covered by pass-through licenses.'' [48] The MLC explains that it ''believes that it can substantially advance transparency'' by doing this, as it would ''for the first time in the industry, give copyright owners an independent record of download store usage that copyright owners can use to verify their royalty accountings from record labels for mechanical licenses that were passed through to DMPs.'' [49] The rule includes this unopposed provision, as it further serves the transparency aims of the MMA.

In addition to adopting the modified DLC proposal, this supplemental interim rule updates the December 2020 rule by providing that the temporary reporting exception the Office had adopted while it noticed this topic for public comment and considered the issue more thoroughly shall be retired as of the effective date of the new provisions now being adopted. Beneficiaries of the temporary exception are reminded that in order to retain the protection of the exception, they must comply with the new supplemental interim rule by reporting the required information to the MLC within 45 days after the rule's effective date.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

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. Amend § 210.24 as follows:

■ a. Remove ''or individual download license'' each place it appears;

■ b. In paragraph (b)(8) introductory text, add a sentence after the second sentence; and

■ c. Add paragraph (b)(9).

The additions read as follows:

§ 210.24 Notices of blanket license.

* * * * *

(b) * * *

(8) * * * This paragraph (b)(8) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. * * *

* * * * *

(9) A description of the extent to which the digital music provider is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Such description may indicate that such authority exists for all permanent downloads. Otherwise, such description shall include a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads. Such description shall also include an identification of the digital music provider's covered activities operated under such authority.

* * * * *

■ 3. Amend § 210.25 by revising paragraph (b)(6) to read as follows:

§ 210.25 Notices of nonblanket activity.

* * * * *

(b) * * *

(6) Acknowledgement of whether the significant nonblanket licensee is operating under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license. Where such authority does not cover all permanent downloads made available on the service, the significant nonblanket licensee shall maintain with the mechanical licensing collective a list of all sound recordings for which it has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority otherwise exists for all permanent downloads.

* * * * *

■ 4. Amend § 210.27 as follows:

■ a. Revise paragraph (c)(5); and

■ b. In paragraph (g)(2)(ii), add a sentence at the end of the paragraph.

The revision and addition read as follows:

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

[43] DLC Supplemental Interim Rule Comment at 5; MLC Supplemental Interim Rule Comment at 2.

[44] MLC Supplemental Interim Rule Comment at 2.

[45] *Id.* at 3.

[46] *See* DLC Supplemental Interim Rule Comment at 5; MLC Supplemental Interim Rule Comment at 2.

[47] *See* 17 U.S.C. 115(d)(1)(C)(i).

[48] MLC Supplemental Interim Rule Comment at 3; DLC & MLC *Ex Parte* Letter add. B at 17 (Dec. 9, 2020).

[49] MLC Supplemental Interim Rule Comment at 3.

§ 210.27 Reports of usage and payment for blanket licensees.

* * * * *

(c) * * *

(5)(i) For any voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a digital music provider from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all sound recordings for which the digital music provider has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the digital music provider indicates that such authority otherwise exists for all permanent downloads, and an identification of the digital music provider's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

* * * * *

(g) * * *

(2) * * *

(ii) * * * These efforts may include providing copyright owners with information on usage of their respective musical works that was identified by a digital music provider as subject to a voluntary license or individual download license.

* * * * *

■ 5. Amend § 210.28 by revising paragraph (c)(5) to read as follows:

§ 210.28 Reports of usage for significant nonblanket licensees.

* * * * *

(c) * * *

(5)(i) For each voluntary license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective. This paragraph (c)(5)(i) does not apply to any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license.

(ii) For any authority obtained by a significant nonblanket licensee from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to an individual download license or voluntary license, and where such authority does not cover all permanent downloads made available on the service, a list of all sound recordings for which the significant nonblanket licensee has obtained such authority from the respective sound recording licensors, or a list of any applicable catalog exclusions where the significant nonblanket licensee indicates that such authority otherwise exists for all permanent downloads, and identification of the significant nonblanket licensee's covered activities operated under such authority. If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

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■ 6. Amend § 210.30 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b); and

■ c. Redesignate paragraph (c) as paragraph (b).

The revision reads as follows:

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

(a) 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 before April 5, 2021, in connection with a submission to the mechanical licensing collective before such date, a submitter may take additional time to comply with such reporting obligations, as amended, by no later than May 19, 2021. Taking such additional time shall not render an otherwise compliant notice of license, notice of nonblanket activity, or report of usage invalid, or 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. Any deadline otherwise applicable to any such action by the mechanical licensing collective shall be tolled with respect to a submitter permitted to take additional time to comply with these reporting obligations until May 19, 2021.

* * * * *

Dated: February 23, 2021.

Shira Perlmutter,

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

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2021–04573 Filed 3–4–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0134; FRL–10020–94–Region 9]

Determination To Defer Sanctions; Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted rules and other materials on behalf of the Pinal County Air Quality Control District (PCAQCD or District) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements. This determination is