

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 381

[Docket No. 21–CRB–0002–PBR (2023–2027)]

## Determination of Rates and Terms for Public Broadcasting (PB IV)

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.**ACTION:** Final rule.**SUMMARY:** The Copyright Royalty Judges publish final regulations that set rates and terms for use of certain works in connection with noncommercial broadcasting for the period from January 1, 2023, through December 31, 2027.**DATES:***Effective date:* June 28, 2023.*Applicability date:* These rates and terms are applicable during the period from January 1, 2023, through December 31, 2027.**ADDRESSES:** For access to the docket to read background documents or the comment received, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 21–CRB–0002–PBR (2023–2027).**FOR FURTHER INFORMATION CONTACT:** Anita Brown, CRB Program Specialist, (202) 707–7658, [crb@loc.gov](mailto:crb@loc.gov).**SUPPLEMENTARY INFORMATION:****Background**

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 118 license. 17 U.S.C. 801(b)(1), 804(b)(6). In accordance with section 804(b)(6), the Judges commenced the proceeding to set rates and terms for the period 2023–2027 on January 5, 2021. 86 FR 325.

In the **Federal Register** notice, the Judges requested that interested parties submit petitions to participate. *Id.* Petitions to Participate (PTPs) were received from: The American Society of Authors, Composers and Publishers (ASCAP); SESAC Performing Rights, LLC; Broadcast Music, Inc. (BMI); Educational Media Foundation (EMF); Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and the Public Broadcasting Service (PBS)

(jointly, the Public Broadcasting Entities (PBE)); National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); the Church Music Publishers' Association (CMPA); The Harry Fox Agency (HFA); Global Music Rights, LLC (GMR); and David Powell.

The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit written direct statements no later than September 10, 2021. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Feb. 9, 2021). The Judges amended the case schedule four times to accommodate ongoing negotiations. *See, e.g.,* Order Granting Joint Motion to Postpone Submission of Written Direct Statements (Dec. 1, 2021). In July 2021, September 2021, November 2021, and December 2022 participants filed notices of settlement and proposed rates and terms for adoption.<sup>1</sup>

There are two ways copyright owners and public broadcasting entities<sup>2</sup> may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements "shall be given effect in lieu of any determination by the . . . Copyright Royalty Judges," provided that copies of the agreement are submitted to the Judges "within 30 days of execution." 17 U.S.C. 118(b)(2). The Judges received five agreements in this category for which no further action was required.<sup>3</sup>

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time

during the proceeding" provided they are submitted to the Judges for approval. This section states that the Judges shall: (1) provide an opportunity to comment on the agreement to non-participants who would be bound by the terms, rates, or other determination set by the agreement; and (2) provide an opportunity to comment and to object to participants in the proceeding who would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

The Judges received negotiated rates and terms from ASCAP (Jul. 2, 2021), BMI (May 17, 2021), GMR (Sept. 9, 2021), and SESAC (Sept. 3, 2021), and jointly from all four (Dec. 7, 2022) regarding rates for compositions in their repertories by certain public broadcasters;<sup>4</sup> and from NRBNMLC jointly with ASCAP (Sept. 9, 2021), BMI (Sept. 10, 2021), GMR (Sept. 9, 2021, and Dec. 7, 2022), SESAC (Sept. 10, 2021), and HFA (June 21, 2021) regarding rates for compositions in their repertories by certain other public broadcasters. The Judges received joint proposals from PBE and HFA regarding the fees in § 381.7 (Dec. 12, 2022); from CPB, NPR, and PBS regarding the provisions of § 381.4 (Dec. 30, 2022); and from CPB and PBS regarding the rates in § 381.8 (Jan. 5, 2023).

The Judges published the aforementioned settlements in the **Federal Register** for comment on January 26, 2023. 88 FR 4928. Members of the public could comment on, and participants in this rate proceeding could comment on and object to, any or all of the proposed regulations and a proposed technical revision.<sup>5</sup> *Id.*

**Statutory Standard and Precedent**

Pursuant to section 801(b)(7)(A) of the Copyright Act, the Judges have the authority to adopt settlements between some or all of the participants to a proceeding at any time during a proceeding. This section states that the Judges shall: (1) provide an opportunity

<sup>1</sup> The Judges received no notice of settlement or proposed rates and terms from participant David Powell.

<sup>2</sup> A "public broadcasting entity" is defined as a "noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)" of section 118. 17 U.S.C. 118(f).

<sup>3</sup> The Judges received agreements with PBE from BMI, HFA, SESAC, ASCAP, and GMR on October 29, 2021; November 2, 2021; November 2, 2021; January 28, 2022; and December 29, 2022, respectively.

<sup>4</sup> The joint proposal aggregates the separate proposals and is to be considered in place of them. *See* Dec. 7, 2022 Joint Proposal at 1 n.1.

<sup>5</sup> The Judges' January 26, 2023 **Federal Register** document proposed technical revisions to §§ 381.7(e) and 381.8(e)(1) to require online filing of cue sheets or summaries in lieu of submissions of electronic copies on compact disk or floppy diskette.

to comment on the agreement to non-participants who would be bound by the terms, rates, or other determination set by the agreement; and (2) provide an opportunity to comment and to object to participants in the proceeding who would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

Regardless of the comments of interested parties or participants, the Judges are not compelled to adopt a settlement to the extent it includes provisions that are inconsistent with the statutory license. *See* Review of Copyright Royalty Judges Determination, 74 FR 4537, 4540 (Jan. 26, 2009) (error for Judges to adopt settlement without threshold determination of legality); *see also* Review of Copyright Royalty Judges Determination, 73 FR 9143, 9146 (Feb. 19, 2008) (error not to set separate rates as required under sections 112 and 114 when parties' unopposed settlement combined rates in contravention of those statutory sections).<sup>6</sup>

As the Register of Copyrights (Register) observed in the 2009 review of the Judges' decision, nothing in the statute precludes rejection of any portions of a settlement that would be contrary to provisions of the applicable license or otherwise contrary to the statute. 74 FR 4540. In the instance under review by the Register, the settlement agreement purported to alter the date(s) for payment of royalties granting licensees a longer period than section 115 provided. *Id.* at 4542. The Register also noted that nothing in the statute relating to adoption of settlements precludes the Judges from considering comments of non-participants "which argue that proposed [settlement] provisions are contrary to statutory law." *Id.* at 4540.

The Judges received one comment from Jacob Eisenmann. Mr. Eisenmann questions whether the joint proposal of ASCAP, BMI, GMR, and SESAC, which proposes to modify the royalty rates set forth in § 381.5 through a term

<sup>6</sup> The Register found that a "paucity of evidence" in the record to support a determination of separate rates for the separate licenses "does not dispatch the . . . Judges' statutory obligations." Review of Copyright Royalty Judges Determination, 73 FR 9143, 9145 (Feb. 19, 2008). The Register noted that the Judges have subpoena power to compel witnesses to appear and give testimony. *Id.*

providing rate options for licensed use of compositions in the GMR repertory by certain entities broadcasting primarily in a religious format, is in violation of the Establishment Clause of the First Amendment to the Constitution. Eisenmann Comment at 1–2. Mr. Eisenmann acknowledges that the history of the interpretation of the Establishment Clause is extensive, and points to *Lynch v. Donnelly*, 465 U.S. 668 (1984), as an analytical framework for determining whether the challenged rates violate the Establishment Clause. *Id.* Mr. Eisenmann offers a perfunctory analysis in which he suggests that the provision regarding rates for compositions in the GMR repertory by certain entities broadcasting primarily in a religious format violates the Establishment Clause. *Id.*

While the Judges may refuse to adopt a settlement that is inconsistent with the statutory license or otherwise contrary to law, the Judges do not find the challenged provisions regarding the GMR repertory to be contrary to law. *Lynch v. Donnelly* notes that there is no single test or criterion for the line-drawing process regarding Establishment Clause concerns of the sort suggested by Mr. Eisenmann, but directs inquiry as to whether a challenged action has a secular purpose, and whether the action impermissibly has a principal or primary effect to advance religion or creates excessive entanglement between religion and government. *Lynch v. Donnelly*, 465 U.S. at 679.

The Judges are directed to 17 U.S.C. 801(b)(7)(A) to consider whether a settlement agreement provides a reasonable basis for setting statutory terms or rates, and to do so based on the record before them if one exists. The arrival upon and submission of settlements, axiomatically, may be driven in part to avoid costly and uncertain litigation, a motivation that is secular in nature, and the settlement at issue addressed a range of uses and users of GMR repertory. Furthermore, the setting of rates and terms, as well as the provisions of Chapter 8 of the Copyright Act, which facilitate and encourage parties to enter into settlement negotiations, serve a secular purpose.

The Judges note that the challenged rates and terms, which were proposed by GMR, apply solely to the GMR repertory. Furthermore, the Judges observe that the challenged rates and terms address genres of music used under the license and the primary genre format of a licensee, without delineation of any particular religion. Under the totality of the circumstances, the Judges

do not find that the challenged provisions impermissibly advance religion or create excessive entanglement between religion and government.

In addition to finding that the challenged rates are not prohibited under the Establishment Clause, the Judges disagree with Mr. Eisenmann's assertion that the challenged rates promote any specific religion either in purpose or effect. By the plain language, the provisions address "stations broadcasting primarily in a religious format" and include a parenthetical language noting that the classification is "without limitation" particularly in relation to several identified genres of music.

For the reasons set forth herein, and on the basis of the entirety of the record before them, the Judges find that adoption of the challenged rates, the product of a settlement applicable to the repertory of the proponent copyright owner, adequately serves a secular purpose and does not impermissibly advance religion or create excessive entanglement between religion and government. In addition, the Judges note the perfunctory nature of Mr. Eisenmann's comment and legal analysis, from which the Judges cannot ascertain a basis for rejecting the settlement on constitutional grounds.

The Judges adopt the rates and terms and technical revision as proposed.

#### List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Rates, Television.

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 381 as follows:

#### PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

##### § 381.1 [Amended]

■ 2. In § 381.1, remove the years "2018" and "2022" and add in their places the years "2023" and "2027", respectively.

■ 3. In § 381.4, revise paragraphs (a) and (c) to read as follows:

**§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).**

(a) *Determination of royalty rate.* The following rates and terms shall apply to

the performance by the Public Broadcasting Service (PBS), National Public Radio (NPR), and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements: The royalty shall be \$1.

\* \* \* \* \*

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of the schedule established in paragraph (a) of this section, permit

such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with American Society of Authors, Composers and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Global Music Rights, LLC (GMR), or SESAC Performing Rights, LLC (SESAC) covering the license period January 1, 2023, to December 31, 2027, to provide a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of the schedule established in paragraph (a),

permit such copyright owner to examine the report.

■ 4. In § 381.5, revise paragraphs (c) through (e) to read as follows:

**§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

\* \* \* \* \*

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) *Music fees.*

TABLE 1 TO PARAGRAPH (c)(1)(i)

Number of full-time students		2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000–4,999	451	463	475	487	500
Level 3	5,000–9,999	619	635	652	669	686
Level 4	10,000–19,999	801	822	843	865	887
Level 5	20,000+	1,009	1,035	1,062	1,090	1,118

(ii) *Fees for stations with an authorized effective radiated power (ERP) of 100 Watts or less.* Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized ERP,

as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current Federal Communications Commission (FCC) license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) *Music fees.*

TABLE 2 TO PARAGRAPH (c)(2)(i)

Number of full-time students		2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000–4,999	451	463	475	487	500
Level 3	5,000–9,999	619	635	652	669	686
Level 4	10,000–19,999	801	822	843	865	887
Level 5	20,000+	1,009	1,035	1,062	1,090	1,118

(ii) *Fees for stations with an authorized ERP of 100 Watts or less.* Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized ERP, as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) *2023:* The 2022 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(ii) *2024:* The 2023 rate, subject to an annual cost of living adjustment in

accordance with paragraph (c)(3)(vi) of this section.

(iii) *2025:* The 2024 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iv) *2026:* The 2025 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(v) *2027:* The 2026 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of: (A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor

Statistics, during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year; or

(B) One and one-half percent (1.5%).

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) *2023:* \$174.00 per station, subject to an annual cost of living adjustment in accordance with § 381.10.

(ii) *2024:* The 2023 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iii) *2025:* The 2024 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(vi) For stations broadcasting primarily in a religious format (including, without limitation, Contemporary Christian music, praise and worship, Gospel, Southern Gospel, Spanish religious music, inspirational, religious, etc.), at their option for 2023–2027, either the rates set forth in paragraph (c)(4) of this section or the rates set forth in § 381.6(d)(4).

(5) For the performance of all other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI,

SESAC, and GMR not later than January 31 of each year. Each annual payment to ASCAP, BMI, SESAC, and GMR shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the ERP as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, SESAC, and GMR.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR shall not in any one calendar year request more than 10 stations to furnish such reports.

■ 5. Amend § 381.6 by revising paragraphs (d) through (f) to read as follows:

**§ 381.6 Performance of musical compositions by other public broadcasting entities.**

\* \* \* \* \*

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 1 TO PARAGRAPH (d)(1)(i)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000–249,999	754	769	784	800	816
Level 3	250,000–499,999	1,346	1,373	1,400	1,428	1,457
Level 4	500,000–999,999	2,017	2,057	2,098	2,140	2,183
Level 5	1,000,000–1,499,999	2,691	2,745	2,800	2,856	2,913
Level 6	1,500,000–1,999,999	3,363	3,430	3,499	3,569	3,640
Level 7	2,000,000–2,499,999	4,035	4,116	4,198	4,282	4,368
Level 8	2,500,000–2,999,999	4,708	4,802	4,898	4,996	5,096
Level 9	3,000,000 and above	6,726	6,861	6,998	7,138	7,280

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 2 TO PARAGRAPH (d)(1)(ii)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000–249,999	574	585	597	609	621
Level 3	250,000–499,999	574	585	597	609	621
Level 4	500,000–999,999	574	585	597	609	621
Level 5	1,000,000–1,499,999	942	961	980	1,000	1,020
Level 6	1,500,000–1,999,999	1,177	1,201	1,225	1,249	1,274
Level 7	2,000,000–2,499,999	1,412	1,440	1,469	1,498	1,528
Level 8	2,500,000–2,999,999	1,647	1,680	1,714	1,748	1,783
Level 9	3,000,000 and above	2,354	2,401	2,449	2,498	2,548

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 3 TO PARAGRAPH (d)(2)(i)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1	0–24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000–249,999	754	769	784	800	816

TABLE 3 TO PARAGRAPH (d)(2)(i)—Continued

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 3 .....	250,000–499,999 .....	1,346	1,373	1,400	1,428	1,457
Level 4 .....	500,000–999,999 .....	2,017	2,057	2,098	2,140	2,183
Level 5 .....	1,000,000–1,499,999 .....	2,691	2,745	2,800	2,856	2,913
Level 6 .....	1,500,000–1,999,999 .....	3,363	3,430	3,499	3,569	3,640
Level 7 .....	2,000,000–2,499,999 .....	4,035	4,116	4,198	4,282	4,368
Level 8 .....	2,500,000–2,999,999 .....	4,708	4,802	4,898	4,996	5,096
Level 9 .....	3,000,000 and above .....	6,726	6,861	6,998	7,138	7,280

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 4 TO PARAGRAPH (d)(2)(ii)

	Population count	Calendar years				
		2023	2024	2025	2026	2027
Level 1 .....	0–24,999 .....	\$265	\$270	\$276	\$281	\$287
Level 2 .....	25,000–249,999 .....	574	585	597	609	621
Level 3 .....	250,000–499,999 .....	574	585	597	609	621
Level 4 .....	500,000–999,999 .....	574	585	597	609	621
Level 5 .....	1,000,000–1,499,999 .....	942	961	980	1,000	1,020
Level 6 .....	1,500,000–1,999,999 .....	1,177	1,201	1,225	1,249	1,274
Level 7 .....	2,000,000–2,499,999 .....	1,412	1,440	1,469	1,498	1,528
Level 8 .....	2,500,000–2,999,999 .....	1,647	1,680	1,714	1,748	1,783
Level 9 .....	3,000,000 and above .....	2,354	2,401	2,449	2,498	2,548

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with 20% or more programming containing Feature Music are as follows:

TABLE 5 TO PARAGRAPH (d)(3)(i)

	Population count	2023	2024	2025	2026	2027
Level 1 .....	0–24,999 .....	\$189	\$192	\$196	\$200	\$204
Level 2 .....	25,000–249,999 .....	189	192	196	200	204
Level 3 .....	250,000–499,999 .....	315	321	328	334	341
Level 4 .....	500,000–999,999 .....	473	482	492	502	512
Level 5 .....	1,000,000–1,499,999 .....	630	643	656	669	682
Level 6 .....	1,500,000–1,999,999 .....	789	805	821	837	854
Level 7 .....	2,000,000–2,499,999 .....	945	964	983	1,003	1,023
Level 8 .....	2,500,000–2,999,999 .....	1,104	1,126	1,149	1,172	1,195
Level 9 .....	3,000,000 and above .....	1,577	1,608	1,640	1,673	1,707

(ii) Talk Format Station fees for stations with <20% Feature Music programming are as follows:

TABLE 6 TO PARAGRAPH (d)(3)(ii)

	Population count	2023	2024	2025	2026	2027
Level 1 .....	0–24,999 .....	\$130	\$133	\$135	\$138	\$141
Level 2 .....	25,000–249,999 .....	189	192	196	200	204
Level 3 .....	250,000–499,999 .....	189	192	196	200	204
Level 4 .....	500,000–999,999 .....	189	192	196	200	204
Level 5 .....	1,000,000–1,499,999 .....	221	225	229	234	239
Level 6 .....	1,500,000–1,999,999 .....	276	282	287	293	299
Level 7 .....	2,000,000–2,499,999 .....	331	337	344	351	358
Level 8 .....	2,500,000–2,999,999 .....	386	394	402	410	418
Level 9 .....	3,000,000 and above .....	552	563	574	586	597

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) For a public broadcasting entity within the scope of this section that is broadcasting one or more radio stations as of January 1, 2023, a single \$50 fee for each such station for the entire five-year license term from 2023 through 2027; and

(ii) For a public broadcasting entity within the scope of this section that begins broadcasting a radio station after January 1, 2023, but before December 31, 2027, a pro-rated amount equal to \$10 multiplied by the number of full or partial years remaining in the 2023–2027 license term as of the date on which the radio station begins broadcasting (e.g., a public broadcasting entity that begins broadcasting a radio station in 2025 shall pay \$30 for that station for the remainder of the term).

(5) For the performance of all other such compositions, from 2023 through 2027: \$1.

(e) *Payment of royalty rate*—(1) *ASCAP, BMI, and SESAC.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, and SESAC. Upon prior written notice thereof from ASCAP, BMI, or SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, and SESAC. Upon prior written notice thereof from ASCAP, BMI, or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

(2) *GMR.* For fees due pursuant to paragraph (d)(4)(i) of this section, the public broadcasting entity shall pay the required royalty rate to GMR not later than January 31, 2023. For fees due pursuant to paragraph (d)(4)(ii) of this

section, the public broadcasting entity shall pay the required royalty rate to GMR not later than 60 days after the public broadcasting entity begins to broadcast the radio station for which such fee is due. If a fee is paid pursuant to paragraph (d)(4)(i) or (ii) of this section for a radio station and that station changes ownership during the course of the license term but continues to fall within the scope of this section, no additional fee shall be due for that station during the 2023–2027 license term.

(f) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR, upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR each shall not in any one calendar year request more than 10 stations to furnish such reports.

■ 6. In § 381.7, revise paragraphs (a) through (c) and (e) to read as follows:

**§ 381.7 Recording rights, rates and terms.**

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, including transmission via the internet by PBS and NPR. The schedule of rates and terms established in this section include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2023–2027
(A) Feature .....	\$121.07
(B) Concert feature (per minute) .....	36.36
(C) Background .....	61.19
(D) Theme:	
(1) Single program or first series program .....	61.19

	2023–2027
(2) Other series program .....	24.84

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2023–2027
(A) Feature .....	\$10.01
(B) Concert feature (per minute) .....	2.63
(C) Background .....	4.35
(D) Theme:	
(1) Single program or first series program .....	4.35
(2) Other series program .....	1.73

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed under this section of a musical work in an NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of the schedule established in this section, “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2023–2027
(i) Feature .....	\$13.11
(ii) Concert feature (per minute) .....	19.24
(iii) Background .....	6.56
(iv) Theme:	
(A) Single program or first series program .....	6.56
(B) Other series program .....	2.62

(3) For purposes of the schedule established in this section, a “concert feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2023-2027
(i) Feature .....	\$.83
(ii) Feature (concert) (per half hour) .....	1.72
(iii) Background .....	.42

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2022, shall be subject to the schedule of royalty rates established in this section.

(6) For each use licensed under this section pursuant to paragraphs (b)(1)(i) and (b)(2) of this section for transmission via the internet, the royalty fees shall include a pro-rata share of \$2,000 per calendar year, which share shall be determined by calculating the aggregate amount of royalty fees earned during that calendar year and dividing the sum by the amount of royalty fees earned for each use.

(c) *Payment of royalty rates.* The required royalty due under paragraphs (b)(1), (2), and (4) of this section shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year and not later than January 31 for uses during the last six months of the preceding calendar year. The required royalty due under paragraph (b)(6) of this section for each calendar year of the statutory license term shall be paid to each known copyright owner not later than March 31 of each following year for PBS- or NPR-distributed uses via the internet during the preceding calendar year.

\* \* \* \* \*

(e) *Filing of use reports with the Copyright Royalty Judges: deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges via online filing in eCRB one electronic copy of their standard music cue sheets or summaries of same listing the recording pursuant to the schedule established in this section of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than

January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to the schedule.

**§ 381.8 [Amended]**

- 7. In § 381.8:
  - a. In paragraph (b)(1) introductory text, add the words “not otherwise licensed by the copyright owner” at the end of the paragraph;
  - b. In paragraphs (b)(1)(i) and (ii), in the table header, remove the year “2013–2017” and add in its place the year “2023–2027”;
  - c. In paragraph (d)(1), add the text “, upon request,” after “shall maintain and”;
  - d. In paragraph (f)(1), remove the year “2017” and add in its place the year “2027”.
- 8. Revise § 381.10 to read as follows:

**§ 381.10 Cost of living adjustment.**

(a) On or before December 1, 2023, the Copyright Royalty Judges shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2022, to the most recent Index published prior to December 1, 2023. On or before each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice to the most recent Index published prior to December 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of the rates for § 381.5(c)(3) and (4), the rates to be charged for compositions in the repertory of SESAC and GMR, which shall adjust the royalty amounts established in a dollar amount according to the greater of:

- (1) The change in the cost of living determined as provided in paragraph (a) of this section; or
- (2) One-and-a-half percent (1.5%).
- (3) Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for the rates for § 381.5(c)(3) and (4) shall become effective thirty (30) days after publication in the **Federal Register**.

Dated: June 9, 2023.  
**David P. Shaw,**  
*Chief Copyright Royalty Judge.*

**David R. Strickler,**  
*Copyright Royalty Judge.*

**Steve Ruwe,**  
*Copyright Royalty Judge.*

Approved by:  
**Carla D. Hayden,**  
*Librarian of Congress.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA–HQ–OAR–2020–0556; FRL–8335–06–OAR]

RIN 2060–AV35

**Testing Provisions for Air Emission Sources; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** The Environmental Protection Agency (EPA) is making a correcting amendment due to an error in a final rule that was published in the **Federal Register** on March 29, 2023, and became effective on May 30, 2023. The final rule corrected and updated regulations for source testing of emissions.

**DATES:** Effective June 28, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0556. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mrs. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711;