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Copyright Royalty Board

37 CFR Part 381

[Docket No. 2006-2 CRB NCBRA]

Noncommercial Educational Broadcasting Statutory License

THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
2007 APR 10 P 2:07
OFFICE OF THE FEDERAL REGISTER
Rec'd

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment certain royalty rates, proposed by the parties in the proceeding to determine the rates and terms for the noncommercial educational broadcasting statutory license contained in the Copyright Act.

DATES: Comments and objections, if any, are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: An original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of a comment or objection must be delivered to the Copyright Royalty Board in one of the following ways: If hand delivered by a private party, the comment or objection should be brought to the Copyright Office Public Information Office in the James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559-6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), the comment or objection must be delivered to the Congressional Courier

Acceptance Site (CCAS) located at 2nd and D Street, NE, Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559-6000. If a comment or objection is sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Comments and objections may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney-Advisor. Telephone (202) 707-7658. Telefax (202) 252-3423.

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. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 253. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108-419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges. 17 U.S.C. 801(b)(1). This is a window year for the establishment of new rates and terms for the 2008-2012 license period.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty

Judges published a notice in the **Federal Register** announcing commencement of proceedings under 17 U.S.C. 118 and requesting interested parties to submit their petitions to participate. 71 FR 1453 (January 9, 2006). Petitions to participate were received from: the American Council on Education ("ACE"); the National Music Publishers Association, Inc. ("NMPA"); the Harry Fox Agency ("HFA"); the National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"); Royalty Logic, Inc.; the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc. ("BMI"); SESAC, Inc.; National Public Radio ("NPR"); the Corporation for Public Broadcasting ("CPB"); the Public Broadcasting Service ("PBS"); and the Church Music Publishers Association, Inc. 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 their written direct statements no later than January 30, 2007. Instead of written direct statements, the parties submitted notification of settlements and proposed rates and terms for the Copyright Royalty Judges to adopt.

There are two ways that copyright owners and public broadcasting entities[1] 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 agreements are submitted to the Copyright Royalty Board "within 30 days of execution." 17 U.S.C. 118(b)(2). The Copyright Royalty Judges received notification of

[1] 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.

several agreements in this category for which no further action is required.

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, and submit them to the Copyright Royalty Judges for approval. Section 801(b)(7)(A) provides that in such event:

> (i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
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> (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). The Copyright Royalty Judges received seven proposals within this category: 1) A joint proposal of BMI and the NRBNMLC; 2) a joint proposal of ASCAP and ACE; 3) a joint proposal of SESAC and ACE; 4) a joint proposal of HFA, NMPA and the NRBNMLC; 5) a joint proposal of SESAC and the NRBNMLC; 6) a joint proposal of ASCAP and the NRBNMLC; and 7) a joint proposal of BMI and ACE. After reviewing the proposals, the Copyright Royalty Judges determined that they were insufficient on their face.[2] By Order

[2] The reason for the insufficiency was the parties' incorrect assumption that the Copyright Royalty Judges would be amending part 253 of title 37 of the Code of Federal Regulations–the Copyright Office's rules–rather than our own rules. As a result, the parties only proposed amendments rather than a complete text of regulations.

dated February 22, 2007, the Judges directed the parties to amend their proposals. On March 15, 2007, ACE, ASCAP, BMI, HFA, NMPA, NPR, NRBNMLC, PBS and SESAC submitted a joint proposal for section 118 rates and terms. It is this proposal that the Judges are publishing today for comment.[3]

As part of this notice of proposed rulemaking ("NPRM"), the Copyright Royalty Judges are modifying three aspects of the joint proposal. First, the proposed regulations for terms governing the recording of nondramatic performances and displays of musical works and the terms for the use of published pictorial, graphic and sculptural works require the deposit with the Copyright Office of cue sheets (for musical works) and standard lists (for pictorial, graphic and sculptural works) in hard copy format. We are changing these provisions to require submission of cue sheets and standard lists in electronic disk format only (due to space limitations) and requiring that they be submitted to the offices of the Copyright Royalty Board rather than the Copyright Office.

Second, the joint proposal requires public broadcasting entities to make information concerning fees deposited in trust funds for unknown copyright owners available upon request to the Copyright Office. We are changing the provision to make the information available to the Copyright Royalty Judges instead of the Copyright Office.

Third, the parties have included a provision in their proposal governing the rates and terms applicable to certain public broadcasting entities that states that such rates and terms are

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[3] Part 381, which we propose today, will be part of a new Subchapter E which will contain the rates and terms for the various statutory licenses. This new subchapter will be established upon the publication of the final determination of the rates and terms for the section 112 and 114 statutory licenses, Docket No. 2005-1 CRB DTRA, and will contain Part 380.

experimental, without precedential effect, and may not be introduced or relied upon in any governmental, administrative or judicial proceeding. The Copyright Royalty Judges decline to include such a provision within our regulations. Our task, as set forth in section 118 and chapter 8 of the Copyright Act, is to adopt rates and terms for the noncommercial broadcasting license. It is not our task to offer evaluations, limitations or characterizations of the rates and terms, or make statements about their use or value in proceedings other than this one.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this NPRM. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to establish rates and terms for the section 118 license.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose the establishment of Part 381 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

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

Sec.

381.1 General.

381.2 Definition of public broadcasting entity.

381.3 [Reserved]

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).

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

381.6 Performance of musical compositions by other public broadcasting entities.

381.7 Recording rights, rates and terms.

381.8 Terms and rates of royalty payments for the use of published pictorial, graphic and sculptural works.

381.9 Unknown copyright owners.

381.10 Cost of living adjustment.

381.11 Notice of restrictions on use of reproductions of transmission programs.

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

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2008, and ending on December 31, 2012. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.3 [Reserved]

§ 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).

The following schedule of rates and terms shall apply to the performance by PBS, 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.

(a) *Determination of royalty rate.* (1) For performance of such work in a feature presentation of PBS:

2008-2012 ..... $227.58

(2) For performance of such a work as background or theme music in a PBS program:

2008-2012 ..... $57.66

(3) For performance of such a work in a feature presentation of a station of PBS:

2008-2012 ..... $19.45

(4) For performance of such a work as background or theme music in a program of a station of PBS:

2008-2012 ..... $4.10

(5) For the performance of such a work in a feature presentation of NPR:

2008-2012 ..... $23.07

(6) For the performance of such a work as background or theme music in an NPR program:

2008-2012 ..... $5.59

(7) For the performance of such a work in a feature presentation of a station of NPR:

2008-2012 ..... $1.63

(8) For the performance of such a work as background or theme music in a program of a station of NPR:

2008-2012 ..... $.58

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate 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.

(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 this schedule, 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 ASCAP, BMI or SESAC covering the license period January 1, 2008, to December 31, 2012, 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 this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of four years following the first performance.

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

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(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, $277 annually in 2007, as adjusted pursuant to § 381.10.

(2) For all such compositions in the repertory of BMI, $277 annually in 2007, as adjusted pursuant to § 381.10.

(3) For all such compositions in the repertory of SESAC, $116 annually in 2008, as adjusted pursuant to § 381.10.

(4) For the performance of any other such compositions: $1.

(d) *Payment of royalty rate* . The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

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

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

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel ("IBOC") digital radio signal and such programming is different than the station's analog

broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Voluntary license agreements*. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(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:

	Population Count	**2008**	**2009**	**2010**	**2011**	**2012**
Level 1	0 - 249,999	$ 550	$ 567	$ 583	$ 601	$ 619
Level 2	250,000 - 499,999	$1,000	$1,030	$1,061	$1,093	$1,126
Level 3	500,000 - 999,999	$1,500	$1,545	$1,591	$1,639	$1,688
Level 4	1,000,000 - 1,499,999	$2,000	$2,060	$2,122	$2,185	$2,251
Level 5	1,500,000 - 1,999,999	$2,500	$2,575	$2,652	$2,732	$2,814
Level 6	2,000,000 - 2,499,999	$3,000	$3,090	$3,183	$3,278	$3,377
Level 7	2,500,000 - 2,999,999	$3,500	$3,605	$3,713	$3,825	$3,939
Level 8	3,000,000 and above	$5,000	$5,150	$5,305	$5,464	$5,628

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

	Population Count	2008	2009	2010	2011	2012
Level 1	0 - 249,999	$ 550	$ 567	$ 583	$ 601	$ 619
Level 2	250,000 - 499,999	$1,000	$1,030	$1,061	$1,093	$1,126
Level 3	500,000 - 999,999	$1,500	$1,545	$1,591	$1,639	$1,688
Level 4	1,000,000 - 1,499,999	$2,000	$2,060	$2,122	$2,185	$2,251
Level 5	1,500,000 - 1,999,999	$2,500	$2,575	$2,652	$2,732	$2,814
Level 6	2,000,000 - 2,499,999	$3,000	$3,090	$3,183	$3,278	$3,377
Level 7	2,500,000 - 2,999,999	$3,500	$3,605	$3,713	$3,825	$3,939
Level 8	3,000,000 and above	$5,000	$5,150	$5,305	$5,464	$5,628

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

	Population Count	2008	2009	2010	2011	2012
Level 1	0 - 249,999	$ 120	$ 124	$ 127	$ 131	$ 135
Level 2	250,000 - 499,999	$ 200	$ 206	$ 212	$ 219	$ 225
Level 3	500,000 - 999,999	$ 300	$ 309	$ 318	$ 328	$ 338
Level 4	1,000,000 - 1,499,999	$ 400	$ 412	$ 424	$ 437	$ 450
Level 5	1,500,000 - 1,999,999	$ 500	$ 515	$ 530	$ 546	$ 563
Level 6	2,000,000 - 2,499,999	$ 600	$ 618	$ 637	$ 656	$ 675
Level 7	2,500,000 - 2,999,999	$ 700	$ 721	$ 743	$ 765	$ 788
Level 8	3,000,000 and above	$1,000	$1,030	$1,061	$1,093	$1,126

(4) For the performance of any other such compositions, in 2008 through 2012, $1.

(d) *Payment of royalty rate.* 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.

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

(f) *Definitions*. As used in paragraphs (c) and (d) of this section, the following terms and their variant forms mean the following:

(1) *Population Count*. The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator Station or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator Station or a Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(2) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(3) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

§ 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. The rates and terms established in this schedule 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:

	2008-2012
Feature	$149.94
Concert feature (per minute)	$44.59
Background	$74.97
Theme:	
Single program or first series program	$74.97
Other series program	$30.39

(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:

	2008-2012
Feature	$9.43
Concert feature (per minute)	$2.48
Background	$4.10
Theme:	
Single program or first series of program	$4.10
Other series program	$1.63

(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 herein of a musical work in a 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 this schedule "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.

	2008-2012
Feature	$12.35
Concert feature (per minute)	$18.13
Background	$6.19
Theme:	

Single program or first series program $6.19

Other series program $2.47

(3) For purposes of this schedule, 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:

	2008-2012
Feature	$.79
Feature (concert) (per half hour)	$1.65
Background	$.40

(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, 2012, shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates*. The required royalty rates 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.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(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 one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule 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 this schedule.

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2008-2012
(A) For featured display of a work	$69.70
(B) For background and montage display	$33.99
(C) For use of a work for program identification or for thematic use	$137.40
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	$45.14

(ii) For such uses in other than PBS-distributed programs:

	2008-2012
(A) For featured display of a work	$45.14

(B) For background and montage display $23.13

(C) For use of a work for program identification or for thematic use $92.27

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule $23.14

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used 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) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(3) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the

required royalty fees to each 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.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for

displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. 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 period 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, 2012, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

§ 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust

funds.

§ 381.10 Cost of living adjustment.

(a) On December 1, 2007, 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, 2006, to the most recent Index published prior to December 1, 2007. On 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 rates for § 381.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

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

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

Dated: April 10, 2007

James Scott Sledge,
Chief Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]

Personnel and Readiness and The Under Secretary of Defense (Comptroller).

(ii) Considers whether Servicemembers Civil Relief Act 50 U.S.C. Appendix, sections 501–591 has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Publishes, prints, stocks, redistributes, and revises DoD forms necessary to process involuntary allotments.

(c) The Heads of the DoD Components shall urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all DoD personnel. See DoD Directive 5500.7.[3]

(d) The Secretaries of the Military Departments shall:

(1) Establish, as necessary, procedures to administer and process involuntary allotments from the pay of members of the Military Services. This includes designating those commanders, or other officials who may act in the absence of the commander, who shall be responsible for determining whether a member's absence from a judicial proceeding was caused by exigencies of military duty, and establishing appeal procedures regarding such determinations.

(2) Require commanders to counsel members to pay their just debts, including complying, as appropriate, with court orders and judgments for the payments of alimony or child support.

(3) Emphasize prompt command action to assist with the processing of involuntary allotment applications.

(e) The Chief, Office of Personnel and Training, for the Coast Guard shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense for Personnel and Readiness to administer and process involuntary allotment from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personal Center:

(i) Implements procedures established by the Under Secretary of Defense for Personnel and Readiness and Chief, Office of Personnel and Training.

(ii) Considers whether the Servicemembers Civil Relief Act, as amended (50 U.S.C. Appendix, sections 501–591) has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard manager for forms necessary to process involuntary allotments.

Dated: April 11, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–7292 Filed 4–16–07; 8:45 am]

BILLING CODE 5001–06–P

[3] See footnote 1 to § 112.4(a)(1).

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2006–2 CRB NCBRA]

Noncommercial Educational Broadcasting Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment certain royalty rates, proposed by the parties in the proceeding to determine the rates and terms for the noncommercial educational broadcasting statutory license contained in the Copyright Act.

DATES: Comments and objections, if any, are due on or before May 17, 2007.

ADDRESSES: An original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD–ROM, CD–R or CD–RW) or floppy diskette of a comment or objection must be delivered to the Copyright Royalty Board in one of the following ways: If hand delivered by a private party, the comment or objection should be brought to the Copyright Office Public Information Office in the James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), the comment or objection must be delivered to the Congressional Courier Acceptance Site (CCAS) located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If a comment or objection is sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments and objections may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney-Advisor. Telephone (202) 707–7658. Telefax (202) 252–3423.

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. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 253. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges. 17 U.S.C. 801(b)(1). This is a window year for the establishment of new rates and terms for the 2008–2012 license period.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of proceedings under 17 U.S.C. 118 and requesting interested parties to submit their petitions to participate. 71 FR 1453 (January 9, 2006). Petitions to participate were received from: the American Council on Education ("ACE"); the National Music Publishers Association, Inc. ("NMPA"); the Harry Fox Agency ("HFA"); the National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"); Royalty Logic, Inc.; the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc. ("BMI"); SESAC, Inc.; National Public Radio ("NPR"); the Corporation for Public Broadcasting ("CPB"); the Public Broadcasting Service ("PBS"); and the Church Music Publishers Association, Inc. 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 their written direct statements no later than January 30, 2007. Instead of written direct statements, the parties submitted notification of settlements and proposed rates and terms for the Copyright Royalty Judges to adopt.

There are two ways that copyright owners and public broadcasting entities [1] 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 agreements are submitted to the Copyright Royalty Board "within 30 days of execution." 17 U.S.C. 118(b)(2). The Copyright Royalty Judges received notification of several agreements in this category for which no further action is required.

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, and submit them to the Copyright Royalty Judges for approval. Section 801(b)(7)(A) provides that in such event:

> (i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). The Copyright Royalty Judges received seven proposals within this category: (1) A joint proposal of BMI and the NRBNMLC; (2) a joint proposal of ASCAP and ACE; (3) a joint proposal of SESAC and ACE; (4) a joint proposal of HFA, NMPA and the NRBNMLC; (5) a joint proposal of SESAC and the NRBNMLC; (6) a joint proposal of ASCAP and the NRBNMLC; and (7) a joint proposal of BMI and ACE. After reviewing the proposals, the Copyright Royalty Judges determined that they were insufficient on their face.[2] By Order dated February 22, 2007, the Judges directed the parties to amend their proposals. On March 15, 2007, ACE, ASCAP, BMI, HFA, NMPA, NPR, NRBNMLC, PBS and SESAC submitted a joint proposal for section 118 rates and terms. It is this proposal that the Judges are publishing today for comment.[3]

As part of this notice of proposed rulemaking ("NPRM"), the Copyright Royalty Judges are modifying three aspects of the joint proposal. First, the proposed regulations for terms governing the recording of nondramatic performances and displays of musical works and the terms for the use of published pictorial, graphic and sculptural works require the deposit with the Copyright Office of cue sheets (for musical works) and standard lists (for pictorial, graphic and sculptural works) in hard copy format. We are changing these provisions to require submission of cue sheets and standard lists in electronic disk format only (due to space limitations) and requiring that they be submitted to the offices of the Copyright Royalty Board rather than the Copyright Office.

Second, the joint proposal requires public broadcasting entities to make information concerning fees deposited in trust funds for unknown copyright owners available upon request to the Copyright Office. We are changing the provision to make the information available to the Copyright Royalty Judges instead of the Copyright Office.

Third, the parties have included a provision in their proposal governing the rates and terms applicable to certain public broadcasting entities that states that such rates and terms are experimental, without precedential effect, and may not be introduced or relied upon in any governmental, administrative or judicial proceeding. The Copyright Royalty Judges decline to include such a provision within our regulations. Our task, as set forth in section 118 and chapter 8 of the Copyright Act, is to adopt rates and terms for the noncommercial broadcasting license. It is not our task to offer evaluations, limitations or characterizations of the rates and terms, or make statements about their use or value in proceedings other than this one.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this NPRM. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to establish rates and terms for the section 118 license.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add Part 381 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

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

Sec.
381.1 General.
381.2 Definition of public broadcasting entity.
381.3 [Reserved]
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).
381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.
381.6 Performance of musical compositions by other public broadcasting entities.
381.7 Recording rights, rates and terms.
381.8 Terms and rates of royalty payments for the use of published pictorial, graphic and sculptural works.
381.9 Unknown copyright owners.
381.10 Cost of living adjustment.
381.11 Notice of restrictions on use of reproductions of transmission programs.

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

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2008, and ending on December 31, 2012. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the

[1] 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.

[2] The reason for the insufficiency was the parties' incorrect assumption that the Copyright Royalty Judges would be amending part 253 of title 37 of the Code of Federal Regulations-the Copyright Office's rules-rather than our own rules. As a result, the parties only proposed amendments rather than a complete text of regulations.

[3] Part 381, which we propose today, will be part of a new Subchapter E which will contain the rates and terms for the various statutory licenses. This new subchapter will be established upon the publication of the final determination of the rates and terms for the section 112 and 114 statutory licenses, Docket No. 2005–1 CRB DTRA, and will contain Part 380.

activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term *public broadcasting entity* means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.3 [Reserved]

§ 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).

The following schedule of rates and terms shall apply to the performance by PBS, 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.

(a) *Determination of royalty rate.* (1) For performance of such work in a feature presentation of PBS:

2008–2012 ..... $227.58

(2) For performance of such a work as background or theme music in a PBS program:

2008–2012 ..... $57.66

(3) For performance of such a work in a feature presentation of a station of PBS:

2008–2012 ..... $19.45

(4) For performance of such a work as background or theme music in a program of a station of PBS:

2008–2012 ..... $4.10

(5) For the performance of such a work in a feature presentation of NPR:

2008–2012 ..... $23.07

(6) For the performance of such a work as background or theme music in an NPR program:

2008–2012 ..... $5.59

(7) For the performance of such a work in a feature presentation of a station of NPR:

2008–2012 ..... $1.63

(8) For the performance of such a work as background or theme music in a program of a station of NPR:

2008–2012 ..... $.58

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate 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.

(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 this schedule, 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 ASCAP, BMI or SESAC covering the license period January 1, 2008, to December 31, 2012, 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 this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of four years following the first performance.

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

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(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, $277 annually in 2007, as adjusted pursuant to § 381.10.

(2) For all such compositions in the repertory of BMI, $277 annually in 2007, as adjusted pursuant to § 381.10.

(3) For all such compositions in the repertory of SESAC, $116 annually in 2008, as adjusted pursuant to § 381.10.

(4) For the performance of any other such compositions: $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

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

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

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel ("IBOC") digital radio signal and such programming is different than the station's analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates

and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(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:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$550	$567	$583	$601	$619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

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

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$550	$567	$583	$601	$619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

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

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	$120	$124	$127	$131	$135
Level 2	250,000–499,999	200	206	212	219	225
Level 3	500,000–999,999	300	309	318	328	338
Level 4	1,000,000–1,499,999	400	412	424	437	450
Level 5	1,500,000–1,999,999	500	515	530	546	563
Level 6	2,000,000–2,499,999	600	618	637	656	675
Level 7	2,500,000–2,999,999	700	721	743	765	788
Level 8	3,000,000 and above	1,000	1,030	1,061	1,093	1,126

(4) For the performance of any other such compositions, in 2008 through 2012, $1.

(d) *Payment of royalty rate.* 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.

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

(f) *Definitions.* As used in paragraphs (c) and (d) of this section, the following terms and their variant forms mean the following:

(1) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator Station or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator Station or a Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(2) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(3) *Translator Station and Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

§ 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. The rates and terms established in this schedule 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:

	2008–2012
(A) Feature	$149.94
(B) Concert feature (per minute)	44.59
(C) Background	74.97
(D) Theme:	
(*1*) Single program or first series program	74.97
(*2*) Other series program	30.39

(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:

	2008–2012
(A) Feature	$9.43
(B) Concert feature (per minute)	2.48
(C) Background	4.10
(D) Theme:	
(*1*) Single program or first series of program	4.10
(*2*) Other series program	1.63

(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 herein of a musical work in a 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 this schedule "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.

	2008–2012
(i) Feature	$12.35
(ii) Concert feature (per minute)	18.13
(iii) Background	6.19
(iv) Theme:	
(A) Single program or first series program	6.19
(B) Other series program	2.47

(3) For purposes of this schedule, 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:

	2008–2012
(i) Feature	$.79
(ii) Feature (concert) (per half hour)	1.65
(iii) Background	.40

(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, 2012, shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rates 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.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR, or other public broadcasting entities shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(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 one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule 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 this schedule.

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this

schedule include the making of the reproductions described in 17 U.S.C. 118(c).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2008–2012
(A) For featured display of a work	$69.70
(B) For background and montage display	33.99
(C) For use of a work for program identification or for thematic use	137.40
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	45.14

(ii) For such uses in other than PBS-distributed programs:

	2008–2012
(A) For featured display of a work	$45.14
(B) For background and montage display	23.13
(C) For use of a work for program identification or for thematic use	92.27
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	23.14

(2) For the purposes of the schedule in paragraph (b)(1) of this section the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used 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.

(3) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(4) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(5) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each 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.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the Copyright Royalty Judges.* (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Royalty Judges one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. 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 period 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, 2012, shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(e), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

§ 381.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three-year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Royalty Judges, upon request, information concerning fees deposited in trust funds.

§ 381.10 Cost of living adjustment.

(a) On December 1, 2007, 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, 2006, to

the most recent Index published prior to December 1, 2007. On 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 rates for § 381.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

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

§ 381.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

Dated: April 10, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–7067 Filed 4–16–07; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0165; FRL–8300–3]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing, under the Clean Air Act, approval of certain revisions to the applicable state implementation plan for the State of Nevada and full disapproval of certain other revisions. These revisions involve State rules governing applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. These revisions involve submittal of certain new or amended State rules and requests by the State for rescission of certain existing rules from the state implementation plan. The rescission requests for which we propose approval are contingent upon receipt of public notice and hearing documentation from the State. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to update the rules governing permitting in the applicable state implementation plan and to rescind unnecessary provisions from the applicable plan. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Any comments must arrive by June 18, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0165, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *R9airpermits@epa.gov.*
3. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. Which rules did the state submit or rescind?
B. What is the regulatory history of the Nevada SIP?
C. What is the purpose of this proposed rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public comment and proposed action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. Which rules did the state submit or rescind?

On February 16, 2005, the State of Nevada's Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) submitted a large revision to the applicable State Implementation Plan (SIP). The February 16, 2005 SIP revision submittal includes statutory provisions, new or amended rules as well as requests for rescission of certain statutory provisions and rules approved by EPA into the applicable SIP. The rules and rescission requests submitted by NDEP on February 16, 2005 relate to definitions, administrative requirements, prohibitory rules, and permitting-related requirements and procedures. The February 16, 2005 SIP submittal also includes documentation of public notice and hearing for all of the new or amended rules through the hearing on November 30, 2004 held by the Nevada State Environmental Commission.

On January 12, 2006, NDEP re-submitted most of the earlier submittal as modified to reflect new or amended rules adopted by the State Environmental Commission on October

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April 10, 2007

Dear Mr. Mosley:

Enclosed for publication are the required copies of Docket No. 2006-2 CRB NCBRA "Noncommercial Educational Broadcasting Statutory License, Notice of proposed rulemaking."

This document is coded in WordPerfect 9.0 format with diskette; the document and WP disk are identical.

Please call Gina Giuffreda or Richard Strasser at (202) 707-7658 when this document has been approved for publication in the **Federal Register**.

Sincerely,

James Scott Sledge,
Chief Copyright Royalty Judge,
Copyright Royalty Board

Enclosures:
1 original and 2 copies
of document
1 diskette

Mr. Ray Mosley
Office of the Federal Register
800 North Capitol St., N.W.
7th Floor, Suite 700
Washington, D.C. 20001