records maintained by third parties for
the purpose of the audit. The Copyright
Owner or Performer requesting the
verification procedure shall retain the
report of the verification for a period of
not less than 3 years.

(e) Acceptable verification procedure.
An audit, including underlying paper-
work, which was performed in the ordi-
nary course of business according to
generally accepted auditing standards
by an independent and Qualified Audi-
tor, shall serve as an acceptable
verification procedure for all parties
with respect to the information that is
within the scope of the audit.

(f) Consultation. Before rendering a
written report to a Copyright Owner or
Performer, except where the auditor
has a reasonable basis to suspect fraud
and disclosure would, in the reasonable
opinion of the auditor, prejudice the in-
vestigation of such suspected fraud, the
auditor shall review the tentative writ-
ten findings of the audit with the ap-
propriate agent or employee of the Col-
lective in order to remedy any factual
errors and clarify any issues relating
to the audit; Provided that the appro-
priate agent or employee of the Collect-
itive reasonably cooperates with the
auditor to remedy promptly any fac-
tual errors or clarify any issues raised
by the audit.

(g) Costs of the verification procedure.
The Copyright Owner or Performer re-
questing the verification procedure
shall pay the cost of the procedure, un-
less it is finally determined that there
was an underpayment of 10% or more,
in which case the Collective shall, in
addition to paying the amount of any
underpayment, bear the reasonable
costs of the verification procedure.

§ 380.11 Definitions.
For purposes of this subpart, the fol-
lowing definitions shall apply:

Aggregate Tuning Hours means the
total hours of programming that the
Broadcaster has transmitted during
the relevant period to all listeners
within the United States from any
channels and stations that provide
audio programming consisting, in
whole or in part, of Eligible Trans-
missions.

Broadcaster means an entity that:
(1) Has a substantial business owning
and operating one or more terrestrial
AM or FM radio stations that are li-
censed as such by the Federal Commu-
nications Commission;
(2) Has obtained a compulsory license
under 17 U.S.C. 112(e) and 114 and the
implementing regulations therefor to

Subpart B—Broadcasters

§ 380.10 General.
(a) Scope. This subpart establishes
rates and terms of royalty payments
for the public performance of sound re-
cordings in certain digital trans-
missions made by Broadcasters as set
forth herein in accordance with the
provisions of 17 U.S.C. 114, and the
making of Ephemeral Recordings by
Broadcasters as set forth herein in ac-
cordance with the provisions of 17
U.S.C. 112(e), during the period Janu-
ary 1, 2011, through December 31, 2015.

(b) Legal compliance. Broadcasters re-
lying upon the statutory licenses set
forth in 17 U.S.C. 112(e) and 114 shall
comply with the requirements of those
sections, the rates and terms of this
subpart, and any other applicable regu-
lations not inconsistent with the rates
and terms set forth herein.

(c) Relationship to voluntary agree-
ments. Notwithstanding the royalty
rates and terms established in this sub-
part, the rates and terms of any license
agreements entered into by Copyright
Owners and digital audio services shall
apply in lieu of the rates and terms of
this subpart to transmission within the
scope of such agreements.

§ 380.11 Definitions.
For purposes of this subpart, the fol-
lowing definitions shall apply:

Aggregate Tuning Hours means the
total hours of programming that the
Broadcaster has transmitted during
the relevant period to all listeners
within the United States from any
channels and stations that provide
audio programming consisting, in
whole or in part, of Eligible Trans-
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(1) Has a substantial business owning
and operating one or more terrestrial
AM or FM radio stations that are li-
censed as such by the Federal Commu-
nications Commission;
(2) Has obtained a compulsory license
under 17 U.S.C. 112(e) and 114 and the
implementing regulations therefor to