

administering the Department's programs and activities.

#### *Potential Costs and Benefits*

The proposed priorities and definitions would impose minimal costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the proposed priorities and definitions outweigh any associated costs because it would result in the Department's discretionary grant programs encouraging the submission of a greater number of high-quality applications and supporting activities that reflect the Administration's educational priorities.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities and definitions would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using a priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

To send any comments that concern how the Department could make the proposed priorities and definitions easier to understand, see the instructions in the **ADDRESSES** section.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an

intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are early learning providers, school districts, IHEs, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed priorities and definitions would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

#### *Paperwork Reduction Act*

The proposed priority and definitions do not contain any information collection requirements.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can

view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Miguel Cardona,**

*Secretary of Education.*

[FR Doc. 2021-14003 Filed 6-29-21; 8:45 am]

**BILLING CODE 4000-01-P**

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## 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, Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms for the use of certain copyrighted works by certain public broadcasting entities for the period beginning January 1, 2023, and ending December 31, 2027.

**DATES:** Comments and objections, if any, are due no later than July 30, 2021.

**ADDRESSES:** You may send comments, identified by docket number 21-CRB-0002-PBR (2023-2027), online through eCRB at <https://app.crb.gov>.

*Instructions:* To send your comment through eCRB, if you do not have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at <https://app.crb.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 21–CRB–0002–PBR (2023–2027).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, at 202–707–7658 or [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). Accordingly, the Judges commenced a proceeding in January 2021, by publishing notice of the commencement of the proceeding and a request that interested parties submit petitions to participate. 86 FR 325 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from The American Society of Authors, Composers and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Church Music Publishers’ Association, Inc. (CMPA); Educational Media Foundation (EMF); Global Music Rights, LLC; National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); David Powell; Public Broadcasting Entities (Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and Public Broadcasting Service (PBS)); SESAC Performing Rights, LLC (SESAC); and The Harry Fox Agency LLC (HFA).

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should 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).

There are two ways copyright owners and public broadcasting entities<sup>1</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).

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 provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that 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.*

On May 17, 2021, the Judges received a proposal from participant BMI regarding “statutory license fees to be paid to BMI by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with [NPR] for the performance of copyrighted musical works in BMI’s repertory” for the years 2023 through 2027. Proposal of Broadcast Music, Inc. of Rates and Terms for Colleges and Universities at 1 (May 17, 2021) (Proposal). No college radio station or related entity filed a

petition to participate in the proceeding, but the National Association of College and University Business Officers (NACUBO) and the American Council on Education (ACE) support BMI’s proposal. Proposal at 4.

The Proposal states that the fees in § 381.5(c)(2)(i) should be modified. *See Id.* at 3–4. The modified fees reflect “an annual cost-of-living increase based on CPI, reflecting how increases were calculated in the joint proposals submitted by BMI and ACE . . . and by BMI and NACUBO” in prior proceedings. *Id.* at 4.

The Judges solicit comments on whether they should adopt the proposed regulations as statutory license fees to be paid by certain public broadcasting entities, namely, noncommercial educational radio stations licensed to colleges or universities that are not members of NPR, for their performances of copyrighted musical works in BMI’s repertory, pursuant to 17 U.S.C. 118.

Comments and objections regarding the proposed changes must be submitted no later than July 30, 2021.

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

Copyright, Music, Radio, Television, Rates.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to 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), 803.

- 2. Revise § 381.5(c)(2)(i) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

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

(i) *Music fees.*

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

<sup>1</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).

	Number of full-time students	2023	2024	2025	2026	2027
Level 5 ...	20,000+ .....	1,009	1,035	1,062	1,090	1,118

\* \* \* \* \*

Dated June 24, 2021.

**Jesse M. Feder,***Chief Copyright Royalty Judge.*

[FR Doc. 2021-13922 Filed 6-29-21; 8:45 am]

BILLING CODE 1410-72-P

**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, Library of Congress.**ACTION:** Proposed rule.

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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).

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On June 21, 2021, the Judges received a joint proposal from participants HFA and NRBNMLC regarding fees for recording rights under 37 CFR 381.7(b)(4) for the period 2023-2027. Joint Proposal . . . Regarding Fees for Recording Rights Under 37 CFR 381.7(B)(4) (June 21, 2021) (Proposal). The fees in § 381.7(b)(4) apply to the "recording of nondramatic performances and displays of musical works for the types of uses described in 17 U.S.C. 118(c)(2)-(3) by noncommercial radio stations other than uses in a radio program produced by [NPR] and other than uses subject to voluntary license agreements." Proposal at 2. HFA and NRBNMLC filed a proposal instead of a notice of settlement because NRBNMLC does not represent all radio stations subject to the fees. *Id.* Participant EMF joins in the proposal. *Id.* at 3 n.2.

The Proposal states that the fees in § 381.7(b)(4) should be modified. *See id.* at 2-3. It also proposes carrying forward