



LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No 23-CRB-0012-WR (2026 – 2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Those Performances (Web VI)

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Proposed rule related to certain noncommercial webcasting

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performance of sound recordings by Educational Media Foundation and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period from January 1, 2026, through December 31, 2030.

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

ADDRESSES: You may submit comments using eCRB, the Copyright Royalty Board's online electronic filing application, at <https://app.crb.gov/>.

Instructions: To send your comment through eCRB, if you don't 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 submitted background documents or comments, go to eCRB, the Copyright Royalty Board’s electronic filing and case management system, at <https://app.crb.gov/>, and search for docket number 23-CRB-0012-WR (2026 – 2030).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, at (202) 707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license that allows for the public performance of sound recordings by means of a digital audio transmission by, among others, eligible nonsubscription transmission services. 17 U.S.C. 114(f). For purposes of the section 114 license, an “eligible nonsubscription transmission” is a noninteractive digital audio transmission that does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or other entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

Services using the section 114 license may need to make one or more temporary or “ephemeral” copies of a sound recording to facilitate the transmission of that recording. The section 112 statutory license allows for the making of these ephemeral reproductions. 17 U.S.C. 112(e).

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 sections 114 and 112 statutory licenses. 17 U.S.C. 801(b)(1), 804(b)(3)(A). The current proceeding commenced in January 2024 for rates and terms that will become effective

from January 1, 2026 through December 31, 2030. Pursuant to section 804(b)(3)(A), the Judges published in the *Federal Register* a notice commencing the proceeding and requesting that interested parties submit their petitions to participate. 89 FR 812 (Jan. 5, 2024). SoundExchange, Inc. (“SoundExchange”), National Religious Broadcasters Music License Committee,¹ and the Educational Media Foundation (“EMF”)² each filed Petitions to Participate, as did others.

On November 21, 2025, the Judges received a joint motion stating that participants in the indicated proceeding, SoundExchange and NRBMLC (“Settling Parties”), together with EMF, had reached a partial settlement regarding rates and terms for certain internet transmissions and related ephemeral recordings made by EMF for 2026-2030 and seeking approval of that partial settlement. Joint Motion to Adopt Settlement, Docket No. 23-CRB-0012-WR (2026 – 2030) (Joint Motion to Adopt Settlement) (eCRB no. 77856). The Settling Parties attached the proposed regulations concerning the settlement, as Exhibit A. *Id.* The Settling Parties attached a copy of the writing embodying their agreement concerning the settlement, as Exhibit B, and represented that there are no other agreements beyond the Exhibit B that represent consideration for, or are contractually related to, the Settlement. *Id.*

Based upon the Judges’ review of the Joint Motion to Adopt Settlement and relevant attachments – including the Judges’ observation that the Settling Parties include sufficient representations that Exhibit B to the Joint Motion to Adopt Settlement constitutes “their agreement concerning the Settlement”, and that there are no other agreements beyond Exhibit B that represent consideration for, or are contractually related to, the Settlement – the Judges find no reason to doubt that Joint Motion to Adopt

¹ The National Religious Broadcasters Music License Committee subsequently filed a Notice that it has changed its name to the NRB Music Licensing Committee, Inc. (“NRBMLC”). Notice of Participant Name Change (Nov. 14, 2025).

² EMF subsequently filed a Notice that it withdraws from this proceeding. EMF Notice of Withdrawal (Jan. 31, 2025).

Settlement, including the Exhibits A and B, constitutes “the agreement” for purposes of Section 801(b)(7)(A), and that the Joint Motion to Adopt Settlement satisfies Section 801(b)(7)(A). Therefore, the Judges hereby publish the Proposed Regulations and request comment from the public.

The contents of Exhibit A are represented in the Proposed Regulations in this Notice. Exhibit B may be found on pages 15-20 of the Joint Motion to Adopt Settlement.³

Statutory Timing of Adoption of Rates and Terms

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty 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. The Judges must provide “an opportunity to comment on the agreement” to participants and non-participants in the rate proceeding who “would be bound by the terms, rates, or other determination set by any agreement....” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to [the agreement’s] adoption as a basis for statutory terms and rates.” *Id.*

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [in the proceeding] objects to the agreement and the [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)(ii), or where the negotiated agreement includes provisions that are contrary to the provisions of the applicable license(s) or otherwise contrary to statutory law. *See* Scope of the Copyright Royalty

³ The docket for this proceeding, including documents referenced in this document, may be accessed via the Electronic filing system eCRB at <https://app.crb.gov> and perform a case search for docket 23-CRB-0012-WR (2026-2030). Exhibit B is included in the document that has been assigned eCRB document number 77856. <https://app.crb.gov/document/download/77856>

Judges Authority to Adopt Confidentiality Requirements upon Copyright Owners within a Voluntarily Negotiated License Agreement, 78 FR 47421, 47422 (Aug. 5, 2013), citing 74 FR 4537, 4540 (Jan. 26, 2009).

Any rates and terms adopted pursuant to this provision would be applicable to all copyright owners of sound recordings and EMF for the license period 2026-2030.

Proposed Adjustments to Rates and Terms

According to the Joint Motion to Adopt Settlement, EMF will make monthly lump sum payments commencing with \$593,750 per month (\$7,125,000 per year) in 2026 to allow it to make an unlimited number of public performances and related ephemeral recordings under the Sections 112(e) and 114 statutory licenses on non-customized channels. Its payments for 2026 are represented as an increase over what it has been paying in 2025, and after 2026, its payments increase by 4% per year for each year of the rate period. Joint Motion to Adopt Settlement at 2.

The Settlement continues EMF's established prior reporting arrangements, which provide for submission of a single, monthly report of use covering all transmissions made by EMF and its affiliates covered by the Settlement, providing what the parties state are administrative efficiencies to SoundExchange and EMF. The agreement also provides EMF, a nonprofit entity largely reliant on listener donations for its funding, an established, fixed royalty obligation which the parties assert serves to simplify EMF's planning, budgeting and targeted fundraising. *Id.* at 3.

The rates set forth in the Settlement are specific to EMF, which is stated to be the largest noncommercial webcaster relying on the statutory licenses and which pays a large majority of the noncommercial webcaster statutory royalties. Because the Settlement applies to only a single payor, it was submitted to the Judges for adoption as a statutory rate and terms so that it will be binding on all artists and copyright owners, including those that are not members of SoundExchange. *Id. citing* 17 U.S.C. § 114(f)(1)(B). The

parties have styled their proposed regulations as subpart F to appear in the Judges' regulations at 37 CFR part 380. Joint Motion to Adopt Settlement at 6, Exhibit A.

Those who would be bound by the terms, rates, or other determination set by the agreement may comment on, and any participants in the *Web VI* proceeding that would be bound by the terms, rates, or other determination set by the agreement may object to, any or all of the proposed regulations contained in this document. Such comments and objections must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings, Webcasters.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

2. Add subpart F to read as follows:

Subpart F — Educational Media Foundation

Sec.

380.50 Definitions.

380.51 Royalty fees for Eligible Transmissions of sound recordings and the making of Ephemeral Recordings.

380.52 Making payment of royalty fees.

380.53 Delivering statements of account.

380.54 Distributing royalty fees.

380.55 Handling Confidential Information.

380.56 Auditing payments and distributions.

§ 380.50 Definitions.

For purposes of this subpart, the following definitions apply:

Collective means the collection and distribution organization that is designated by the Copyright Royalty Judges, which, for the current rate period, is SoundExchange, Inc.

Copyright Owners means sound recording copyright owners, and rights owners under 17 U.S.C. 1401(1)(2), who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

Digital Audio Transmission has the same meaning as in 17 U.S.C. 114(j)(5).

Eligible Transmission means an “eligible nonsubscription transmission” as defined in 17 U.S.C. 114(j)(6) that is:

- (1) made by the Licensee;
- (2) subject to licensing under 17 U.S.C. 114(d)(2);
- (3) transmitted over the internet on a channel or station offered for streaming to any member of the public who chooses to listen and that provides only linear programming that is not personalized to any particular listener.

Ephemeral Recording has the same meaning as in 17 U.S.C. 112.

Licensee means Educational Media Foundation and its affiliated organizations under common control, including K-LOVE, Inc. and The Association for Community Education, Inc., so long as each of these organizations is a Noncommercial Webcaster.

Noncommercial Webcaster has the same meaning as in 17 U.S.C. 114(f)(4)(E)(i).

Nonsubscription has the same meaning as in 17 U.S.C. 114(j)(9).

Payor means the entity required to make royalty payments to the Collective or the entity required to distribute royalty fees collected, depending on context. The Payor is:

- (1) The Licensee, in relation to the Collective; and
- (2) The Collective in relation to a Copyright Owner or Performer.

Performance means each instance in which any portion of a sound recording is publicly performed to a listener by means of a Digital Audio Transmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one listener), but excludes the following:

- (1) A performance of a sound recording that does not require a license (*e.g.*, a sound recording that is not subject to protection under title 17, United States Code);
- (2) A performance of a sound recording for which the Licensee has previously obtained a license from the Copyright Owner of such sound recording; and
- (3) An incidental performance that both:
 - (i) Makes no more than incidental use of sound recordings including, but not

limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

- (ii) Does not contain an entire sound recording, other than ambient music that is background at a public event, and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor means an independent Certified Public Accountant.

§ 380.51 Royalty fees for Eligible Transmissions of sound recordings and the making of Ephemeral Recordings.

- (a) *Royalty fees.* During the period 2026-2030, the Licensee's royalty payment for all Eligible Transmissions made by the Licensee during each year, and for Ephemeral Recordings of sound recordings made pursuant to 17 U.S.C. 112(e) to facilitate such Eligible Transmissions, shall be as follows:

- (1) 2026: \$7,125,000.00 (\$593,750.00 per month);
- (2) 2027: \$7,410,000.00 (\$617,500.00 per month);
- (3) 2028: \$7,706,400.00 (\$642,200.00 per month);
- (4) 2029: \$8,014,656.00 (\$667,888.00 per month); and
- (5) 2030: \$8,335,242.24 (\$694,603.52 per month).

- (b) *Allocation between Ephemeral Recordings and performance royalty fees.* The Collective must credit 5% of all royalty payments as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that the Licensee makes which are necessary and commercially reasonable for making Eligible Transmissions are included in the 5%.

- (c) *Other Digital Audio Transmissions.* During the period 2026-2030, if the Licensee makes any Digital Audio Transmissions of sound recordings subject to licensing under 17 U.S.C. 114(d)(2) other than Eligible Transmissions, the provisions of subparts A and B of this part shall apply.

§ 380.52 Making payment of royalty fees.

- (a) *Payment to the Collective.* The Licensee must make the royalty payments due under this part to SoundExchange, Inc., which is the Collective designated by the Copyright Royalty Board to collect and distribute royalties under this part.
- (b) *Monthly payments.* The Licensee must make royalty payments on a monthly basis. Each month during the period 2026-2030, the Licensee shall pay one-twelfth

of the annual royalty for the relevant year, as set forth in § 380.51(a). Each such payment shall be made on or before the fifteenth day of the month and shall be accompanied by a Statements of Account in accordance with § 380.53. Payments shall be made in U.S. dollars in accordance with wiring instructions that will be separately provided by the Collective from time to time.

- (c) *Reports of Use.* The Licensee shall submit a single, monthly Report of Use, as described in 37 C.F.R. § 370.4, reflecting actual total Performances made by the Licensee and all of its affiliates, for all Eligible Transmissions and any other Digital Audio Transmissions it may make as a Noncommercial Webcaster pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114. Reports of Use are due on or before the 30th day after the end of the month in which the Licensee made Eligible Transmissions.
- (d) *Late fees.* The Licensee must pay a late fee for each payment and each Statement of Account that the Collective receives after the due date. The late fee is 1.5% (or the highest lawful rate, whichever is lower) of the late payment amount per month. The late fee for a late Statement of Account is 1.5% of the payment amount associated with the Statement of Account. Late fees accrue from the due date until the date that the Collective receives the late payment or late Statement of Account.
 - (1) *Waiver of late fees.* The Collective may waive or lower late fees for immaterial or inadvertent failures of the Licensee to make a timely payment or submit a timely Statement of Account.
 - (2) *Notice regarding noncompliant Statements of Account.* If it is reasonably evident to the Collective that a timely-provided Statement of Account is materially noncompliant, the Collective must notify the Licensee within 90 days of discovery of the noncompliance.
- (e) *Use of account numbers.* If the Collective notifies the Licensee of an account number to be used to identify its royalty payments for a particular service offering, the Licensee must include that account number in the identifying information for any payment for that service offering made by electronic transfer, in its Statements of Account for that service offering under § 380.53, and in the transmittal of its Reports of Use for that service offering under § 370.4 of this chapter.

§ 380.53 Delivering statements of account.

- (a) *Statements of Account.* Any payment due under this part must be accompanied by a corresponding Statement of Account that must contain the following information:
 - (1) The amount of the royalty payment and the month for which it is submitted;
 - (2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the Statement of Account;

- (3) The account number assigned to the Licensee by the Collective for the relevant service offering (if the Licensee has been notified of such account number by the Collective);
 - (4) The signature of:
 - (i) The Licensee or a duly authorized agent of the Licensee;
 - (ii) A partner or delegate if the Licensee is a partnership; or
 - (iii) An officer of the corporation if the Licensee is a corporation.
 - (5) The printed or typewritten name of the person signing the Statement of Account;
 - (6) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the Statement of Account;
 - (7) A certification of the capacity of the person signing;
 - (8) The date of signature; and
 - (9) An attestation to the following effect: I, the undersigned owner/officer/partner/agent of the Licensee have examined this Statement of Account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence and that it fairly presents, in all material respects, the liabilities of the Licensee pursuant to 17 U.S.C. 112(e) and 114 and applicable regulations adopted under those sections.
- (b) *Certification.* Licensee's Chief Financial Officer or, if Licensee does not have a Chief Financial Officer, a person authorized to sign Statements of Account for the Licensee, must submit a signed certification on an annual basis attesting that the Licensee's royalty statements for the prior year represent a true and accurate determination of the royalties due.

§ 380.54 Distributing royalty fees.

(a) *Distribution of royalties.*

- (1) The Collective must promptly distribute royalties received from the Licensee to Copyright Owners and Performers that are entitled thereto, or to their designated agents. The Collective shall only be responsible for making distributions to those who provide the Collective with information as is necessary to identify and pay the correct recipient. The Collective must distribute royalties on a basis that values all Performances by the Licensee equally based upon the information provided under the Reports of Use requirements for the Licensee pursuant to § 370.4 of this chapter and this subpart. In any case in which the Licensee has not provided a compliant Report of Use within three years after the due date specified in

Section 370.4(c), whether for the current license period or otherwise, and the board of directors of the Collective determines that further efforts to seek the missing Report of Use from the Licensee would not be warranted, the Collective may distribute the royalties associated with the Licensee's missing Report of Use on the basis of Reports of Use for the corresponding calendar year filed by other licensees.

- (2) The Collective must use its best efforts to identify and locate Copyright Owners and featured artists in order to distribute royalties payable to them under 17 U.S.C. 112(e) and 114. Such efforts must include, but not be limited to, searches in Copyright Office public records and published directories of Copyright Owners.
- (b) *Unclaimed funds.* If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective must retain the required payment in a segregated trust account for a period of three years from the date of the first distribution of royalties from the relevant payment by the Licensee. No claim to distribution shall be valid after the expiration of the three-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3).
- (c) *Retention of records.* The Licensee shall keep and securely store complete and accurate books and records relating to payments of royalties for a period of not less than the prior three calendar years, including all supporting documentation necessary to permit verification of the accuracy of its payments pursuant to § 380.51. The Collective shall keep books and records relating to distributions of royalties for a period of not less than the prior three calendar years.
- (d) *Designation of the Collective.*
- (1) The Judges designate SoundExchange, Inc., as the Collective to receive Statements of Account and royalty payments from the Licensee and to distribute royalty payments to each Copyright Owner and Performer (or their respective designated agents) entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).
 - (2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced for the applicable royalty period by a successor Collective according to the following procedure:
 - (i) The nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding SoundExchange's cessation or dissolution shall vote by a majority to recommend that the Copyright Royalty Judges designate a successor and must file a petition with the Copyright Royalty Judges requesting that the Judges designate the named successor and setting forth the reasons therefore.

- (ii) Within 30 days of receiving the petition, the Copyright Royalty Judges must issue an order designating the recommended Collective, unless the Judges find good cause not to make and publish the designation in the Federal Register.

§ 380.55 Handling Confidential Information.

- (a) *Definition.* For purposes of this part, “Confidential Information” means the Statements of Account, any information contained therein, and any information pertaining to the Statements of Account reasonably designated as confidential by the party submitting the statement. Confidential Information does not include documents or information that at the time of delivery to the Collective is public knowledge. The party seeking information from the Collective based on a claim that the information sought is a matter of public knowledge shall have the burden of proving to the Collective that the requested information is in the public domain.
- (b) *Use of Confidential Information.* The Collective may not use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.
- (c) *Disclosure of Confidential Information.* The Collective shall limit access to Confidential Information to:
 - (1) Those employees, agents, consultants, and independent contractors of the Collective, subject to an appropriate written confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related directly thereto who require access to the Confidential Information for the purpose of performing their duties during the ordinary course of their work;
 - (2) A Qualified Auditor or outside counsel who is authorized to act on behalf of:
 - (i) The Collective with respect to verification of the Licensee’s statement of account pursuant to this part; or
 - (ii) A Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to this part;
 - (3) Copyright Owners and Performers, including their designated agents, whose works the Licensee used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate written confidentiality agreement, and including those employees, agents, consultants, and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate written confidentiality agreement, who require access to the Confidential Information to perform their duties during the ordinary course of their work;
 - (4) Attorneys and other authorized agents of parties to proceedings under

17 U.S.C. 112 and 114, acting under an appropriate protective order.

- (d) *Safeguarding Confidential Information.* The Collective and any person authorized to receive Confidential Information from the Collective must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.

§ 380.56 Auditing payments and distributions.

- (a) *General.* This section prescribes procedures by which any entity entitled to receive payment or distribution of royalties may verify payments or distributions by auditing the Payor. The Collective may audit the Licensee's payments of royalties to the Collective, and a Copyright Owner or Performer may audit the Collective's distributions of royalties to the Copyright Owner or Performer. Nothing in this section shall preclude a verifying entity and the Payor from agreeing to verification methods in addition to or different from those set forth in this section.
- (b) *Frequency of auditing.* The verifying entity may conduct an audit of each licensee only once a year for any or all of the prior three calendar years. A verifying entity may not audit records for any calendar year more than once.
- (c) *Notice of intent to audit.* The verifying entity must file with the Copyright Royalty Judges a notice of intent to audit the Payor, which notice the Judges must publish in the Federal Register within 30 days of the filing of the notice. Simultaneously with the filing of the notice, the verifying entity must deliver a copy to the Payor.
- (d) *The audit.* The audit must be conducted during regular business hours by a Qualified Auditor who is not retained on a contingency fee basis and is identified in the notice. The auditor shall determine the accuracy of royalty payments or distributions, including whether an underpayment or overpayment of royalties was made. An audit of books and records, including underlying paperwork, performed in the ordinary course of business according to generally accepted auditing standards by a Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.
- (e) *Access to third-party records for audit purposes.* The Payor must use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit.
- (f) *Duty of auditor to consult.* The auditor must produce a written report to the verifying entity. Before rendering the report, unless the auditor has a reasonable basis to suspect fraud on the part of the Payor, the disclosure of which would, in the reasonable opinion of the auditor, prejudice any investigation of the suspected fraud, the auditor must review tentative written findings of the audit with the appropriate agent or employee of the Payor in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Payor reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit. The auditor must

include in the written report information concerning the cooperation or the lack thereof of the employee or agent.

- (g) *Audit results; underpayment or overpayment of royalties.* If the auditor determines the Payor underpaid royalties, the Payor shall remit the amount of any underpayment determined by the auditor to the verifying entity, together with interest at the rate specified in § 380.2(d). In the absence of mutually-agreed payment terms, which may, but need not, include installment payments, the Payor shall remit promptly to the verifying entity the entire amount of the underpayment determined by the auditor. If the auditor determines the Payor overpaid royalties, however, the verifying entity shall not be required to remit the amount of any overpayment to the Payor, and the Payor shall not seek by any means to recoup, offset, or take a credit for the overpayment, unless the Payor and the verifying entity have agreed otherwise.
- (h) *Paying the costs of the audit.* The verifying entity must pay the cost of the verification procedure, unless the auditor determines that there was a net underpayment (i.e., underpayments less any overpayments) of 10% or more, in which case the Payor must bear the reasonable costs of the verification procedure, in addition to paying or distributing the amount of any underpayment.
- (i) *Retention of audit report.* The verifying party must retain the report of the audit for a period of not less than three years from the date of issuance.

Dated: December 2, 2025.

Christina L. Shifton
Interim Chief Copyright Royalty Judge