

adding in its place Table I-08 to read as follows:

Appendix D to Part 4044—Tables Used to Determine Expected Retirement Age

TABLE I-08.—SELECTION OF RETIREMENT RATE CATEGORY
[(For Plans with valuation dates after December 31, 2007, and before January 1, 2009)]

Participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low ¹ if monthly benefit at URA is less than—	Medium ² if monthly benefit at URA is		High ³ if monthly benefit at URA is greater than—
		From	To	
2009	536	536	2,264	2,264
2010	549	549	2,320	2,320
2011	563	563	2,376	2,376
2012	576	576	2,430	2,430
2013	589	589	2,486	2,486
2014	602	602	2,544	2,544
2015	616	616	2,602	2,602
2016	630	630	2,662	2,662
2017	645	645	2,723	2,723
2018 or later	660	660	2,786	2,786

¹ Table II-A.

² Table II-B.

³ Table II-C.

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Issued in Washington, DC, this 27th day of November, 2007.

Vincent K. Snowbarger,

Deputy Director, Pension Benefit Guaranty Corporation.

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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: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting statutory license for the license period 2008–2012.

DATES: *Effective Date:* January 1, 2008.

Applicability Date: The regulations apply to the license period January 1, 2008 through December 31, 2012.

FOR FURTHER INFORMATION CONTACT:

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707-7658 or e-mail at 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. 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. 108-419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (“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 the 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. 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 20, 2007. Instead of written direct statements, the parties submitted notification of settlements and proposed rates and terms for the Judges to adopt.

Section 801(b)(7)(A) allows for the adoption of 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 Copyright Royalty Judges for approval. This section 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). Accordingly, on April 17, 2007, the Judges published a Notice of Proposed Rulemaking (“NPRM”) requesting comment on the

proposed rates and terms, with certain modifications, submitted to the Judges as part of a joint proposal by the following parties: ACE, ASCAP, BMI, HFA, NMPA, NPR, NRBNMLC, PBS, and SESAC. 72 FR 19138 (April 17, 2007). Comments were due by May 17, 2007.

In response to the NPRM, the Judges received only one comment, which was jointly submitted by NPR and PBS, stating that there had been an inadvertent error in the joint proposal with respect to some of the NPR and PBS proposed royalty rates, thereby making the rates proposed in § 381.7(b)(1)(i) incorrect. Comments of NPR and PBS, filed May 15, 2007, at 2. They then set out the intended rates. *Id.*

Consequently, as required by section 801(b)(7)(A), the Judges published a second NPRM requesting comment on the rates correcting those previously proposed in § 381.7(b)(1)(i). 72 FR 54623 (September 26, 2007) and 72 FR 57101 (October 5, 2007). Comments were due by October 26, 2007. In response to this NPRM, the Judges received one comment from the organization Students for a Democratic Society. The comment stated that “in some cases these royalties might be restrictive” and that royalties may be paid “for something that (perhaps) is in fact Fair Use.” Comment submitted by Students for a Democratic Society on September 26, 2007. However, there was no indication that this organization would be bound by the proposed rates and terms or that it was prepared to participate in further proceedings to establish rates and terms for the section 118 license.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the section 118 statutory license for the period 2008–2012.

Cost of Living Adjustment

The regulations adopted today require that on December 1 of each year, starting with 2007, the Judges publish 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 the previous notice,¹ to the most recent Index published prior to December 1 of that year. 37 CFR 381.10(a). The regulations also require

the Judges to publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertoires by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 381.10(b). However, the rate for SESAC set forth in § 381.5(c)(4) is the rate, without any adjustment, to be paid to SESAC for calendar year 2008. This rate will be subject to an annual cost of living adjustment each year thereafter for calendar years 2009 through 2012. See Joint Proposal of SESAC, Inc. and the American Council of Education at 2 (filed January 26, 2007). Therefore, the Copyright Royalty Judges are announcing the change in the Consumer Price Index and performing the required cost of living adjustment only to the rates for ASCAP and BMI set out in §§ 381.5(c)(1) and (c)(2) in the April 17 NPRM. See 72 FR 19140.

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 before December 1, 2006, to the most recent Index published before December 1, 2007, is 3.5% (2006's figure was 201.8; the figure for 2007 is 208.936, based on 1982–1984 = 100 as a reference base). Rounding off to the nearest dollar, the royalty rate for the use of musical compositions in each of the repertoires of ASCAP and BMI is \$287.

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding 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 or 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
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- (2) For performance of such a work as background or theme music in a PBS program:

2008–2012	\$57.66
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- (3) For performance of such a work in a feature presentation of a station of PBS:

2008–2012	\$19.45
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- (4) For performance of such a work as background or theme music in a program of a station of PBS:

2008–2012	\$4.10
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- (5) For the performance of such a work in a feature presentation of NPR:

¹ The last cost of living adjustment was published on December 1, 2006. See 71 FR 69486.

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	\$5.58

(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, \$287 annually.

(2) For all such compositions in the repertory of BMI, \$287 annually.

(3) For all such compositions in the repertory of SESAC, \$116 annually.

(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	\$114.09
(B) Concert feature (per minute)	34.26
(C) Background	57.66
(D) Theme:	
(1) Single program or first series program	57.66

	2008–2012
(2) Other series program	23.41

(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 or before 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: November 23, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7-23145 Filed 11-29-07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 409

[CMS-1545-CN2]

RIN 0938-AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction notice.

SUMMARY: This document corrects technical errors that appeared in the August 3, 2007 **Federal Register**, entitled “Medicare Program; Prospective Payment System and Consolidated

Billing for Skilled Nursing Facilities for FY 2008; Final Rule.”

DATES: *Effective Date:* This correction is effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786-5667.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 2007, we published a correction notice (FR Doc. E7-18732, 72 FR 55085) to correct a number of technical errors that appeared in the FY 2008 Skilled Nursing Facility Prospective Payment System (SNF PPS) final rule on August 3, 2007 (FR Doc. 07-3784, 72 FR 43412). In this notice, we are correcting certain technical errors in the wage index values, which have been recently identified. Specifically, we have determined that in the process of developing the most recent hospital wage index, an inpatient hospital provider was inadvertently assigned to the wrong Core-Based Statistical Area (CBSA). This provider was incorrectly located in CBSA 16180 (Carson City, NV) instead of CBSA 39900 (Reno-Sparks, NV). Accordingly, we are revising the wage index values for CBSA 16180 Carson City, NV from 0.9353 to the corrected value of 1.0003. Similarly, we are revising the wage index value for CBSA 39900 Reno-Sparks, NV from 1.0959 to the corrected value of 1.0715. As we are revising the entries for only these two particular CBSAs, we are not republishing the lengthy Table 8, “FY 2008 Wage Index for Urban Areas Based on CBSA Labor Market Areas,” in its entirety in this notice. We note that the corrected version of this table is available online on the SNF PPS website, at http://www.cms.hhs.gov/SNFPPS/04_WageIndex.asp.

The corrections in this document appear below in the “Correction of Errors” section. The provisions in this correction notice are effective as of January 1, 2008.

II. Correction of Errors

In FR Doc. 07-3784 (72 FR 43412), make the following corrections:

1. On page 43441, in column 3 (“Wage Index”) of Table 8, “Wage Index for Urban Areas Based on CBSA Labor Market Areas”, the entry “0.9353” for CBSA 16180 Carson City, NV is corrected to read “1.0003”.

2. On page 43455, in column 3 (“Wage Index”) of Table 8, “Wage Index for Urban Areas Based on CBSA Labor Market Areas”, the entry “1.0959” for CBSA 39900 Reno-Sparks, NV is corrected to read “1.0715”.