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**1410-72-P**

**Copyright Royalty Board**

**37 CFR Part 370**

**[Docket No. RM 2008-7]**

Notice and Recordkeeping for Use of Sound Recordings under Statutory License;  
Technical Amendment

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule.

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**SUMMARY:** On June 21, 2016, the Copyright Royalty Judges (Judges) published in the **Federal Register** a technical amendment to regulations that govern reporting requirements for noncommercial educational webcasters that pay no more than the minimum fee for their use of sound recordings under the applicable statutory licenses. Subsequently, interested parties petitioned the Judges to amend the regulations further to effect the Judges' stated intent. The Judges' hereby publish the proposed amendment and request comments to the proposed rule.

**DATES:** Comments are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER.**]

**ADDRESSES:** This notice and request is also posted on the agency's website ([www.loc.gov/crb](http://www.loc.gov/crb)) and on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)). Submit electronic comments to [crb@loc.gov](mailto:crb@loc.gov). See the Supplementary Information section below for instructions on submitting comments in other formats.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Whittle at (202) 707-7658 or at [crb@loc.gov](mailto:crb@loc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Introduction**

The Copyright Royalty Judges (Judges) published a technical amendment to a final rule in the **Federal Register** to clarify that the reporting requirements in Part 370 that applied to “Minimum Fee Broadcasters” now apply to the more inclusive group, “*Eligible Minimum Fee Webcasters*”<sup>1</sup>. 81 FR 40190 (Jun. 21, 2016) (emphasis added). The Judges added the new term “Eligible Minimum Fee Webcaster” to the definition section of 37 CFR 370.4. They also removed the “Minimum Fee Broadcaster” definition, which they deemed to be no longer necessary because the new definition of “Eligible Minimum Fee Webcasters” was intended to include the entities that qualified under the prior definition of “Minimum Fee Broadcasters.”

By adding the new term “Eligible Minimum Fee Webcasters,” the Judges intended to expand relaxed reporting requirements then available to Minimum Fee Broadcasters to certain nonprofit educational webcasters that had previously been denied those expanded relaxed reporting requirements.

On June 21, 2016, the Judges received a Joint Petition of the National Association of Broadcasters and the National Religious Broadcasters Noncommercial Music License Committee to Amend Final Rule Regarding Reporting Requirements (Joint Motion). The moving parties contended that by removing the definition of “Minimum Fee Broadcaster,” the Judges had failed to effect their intent. The moving parties requested that the Judges reinstate the definition of “broadcaster” as “an entity that owns and

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<sup>1</sup> The Judges used the term “webcaster” advisedly, as stations do not report or pay royalties for broadcasting over the air. They only pay for the rights to stream sound recordings over the Internet, or “webcast.”

operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission.” Absent this amendment, the petitioners contended that noncommercial minimum fee broadcasters that were not educational webcasters were excluded from the new definition of “Eligible Minimum Fee Webcaster.”

The Judges find that the regulation, as amended on June 21, 2016, defines the new term “Eligible Minimum Fee Webcaster” too narrowly and therefore arguably excludes noncommercial minimum fee broadcasters, a category that the Judges had intended to include.

The Judges shall treat the Joint Motion as a petition for rulemaking and now propose to make the necessary changes to include minimum fee noncommercial broadcasters in the definition of “Eligible Minimum Fee Webcasters.” That inclusion shall ensure that noncommercial minimum fee broadcasters qualify fully for the relaxed reporting requirements in part 370.

### **How to Submit Comments**

Interested parties must submit comments to only one of the following addresses. Unless responding by email, claimants must submit an original, five paper copies, and an electronic version on a CD or other portable memory device in Portable Document Format (PDF) that contains searchable, accessible text (not a scanned image of text). Commenters should conform all filed electronic documents to the Judges’ Guidelines for Electronic Documents posted on the Copyright Royalty Board website at [http://www.loc.gov/crb/docs/Guidelines\\_for\\_Electronic\\_Documents.pdf](http://www.loc.gov/crb/docs/Guidelines_for_Electronic_Documents.pdf).

Email: [crb@loc.gov](mailto:crb@loc.gov); or

**U.S. mail:** Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

**Overnight service (only USPS Express Mail is acceptable):** Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

**Commercial courier:** Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2<sup>nd</sup> Street NE and D Street NE, Washington, DC; or

**Hand delivery:** Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

**List of subjects in 37 CFR 370**

Copyright, Sound recordings.

**Proposed Regulations**

In consideration of the foregoing, the Copyright Royalty Judges propose to amend 37 CFR part 370 as follows:

**PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES**

1. The authority citation for part 370 continues to read as follows:

**Authority:** 17 U.S.C. 112(e)(4), 114(f)(4)(A).

2. In § 370.4, in paragraph (b), revise the definition of “Eligible Minimum Fee Webcaster” to read as follows:

**§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.**

\* \* \* \* \*

(b) \* \* \*

*Eligible Minimum Fee Webcaster* means a nonsubscription transmission service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and:

- (i) Is a Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission; or
- (ii) Is directly operated by, or affiliated with and officially sanctioned by, a domestically accredited primary or secondary school, college, university, or other post-secondary degree-granting institution; and
  - (A) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution;
  - (B) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes; and
  - (C) Is not a “public broadcasting entity” (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396

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Dated: July 28, 2016

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Suzanne M. Barnett  
Chief Copyright Royalty Judge

[FR Doc. 2016-19097 Filed: 8/8/2016 11:15 am; Publication Date: 8/10/2016]