Attachment I

The following DHHS regulations apply to all applicants/grantees under the Discretionary Grants Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Procedures of the Department Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension form Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services
Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, signed SF–424, "Application for Federal assistance". The letter code for the priority area e.g., UR) should be in the lower right hand corner.
2. A completed "Budget Information—Non-Construction" (SF–424A);
3. A signed "Assurance—Non-Construction" (SF–424A);
4. A Project Abstract
5. A Project Narrative beginning with a Table of Contents that describes the project in the following order:

(a) Eligibility Confirmation
(b) Analysis of Need (except for Sub-Priority 1.4)
(c) Organizational Experience and Staff Responsibilities
(d) Work Program (including Executive Summary)

6. Appendices, including By-Laws; Articles of Incorporation, proof of non-profit status where applicable; resumes, written agreements re grants, coordination with JOBS, etc.; Single Point of Contact comments (where applicable); certification regarding anti-lobbying activities; and a disclosure of lobbying activities.
7. A signed copy of "Certification Regarding Anti-Lobbying Activities.
8. A completed "Disclosures of Lobbying Activities", if appropriate; and
9. A self-addressed mailing label which can be affixed to a notice to acknowledge receipt of application.

The application should not exceed a total of 50 pages for applications submitted under sub-priority areas 1.1 and 1.2 and 30 pages for all applications submitted under the other subpriority areas. It should include one original and four identical copies, printed on white 8½ by 11 inch paper only. Applications should be two holed punched at the top center and fastened with a compressor slide paper fastener or a binder clip. All pages should be numbered.

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federal register

Monday
May 9, 1994

Part III

Library of Congress

Copyright Office

37 CFR Parts 251, 252, etc.

Copyright Arbitration Royalty Panels; Rules and Regulations; Interim Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 254, 255, 256, 257, 258, 259, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311

[Docket No. RM 94-1A]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations to revise the rules and regulations of the former Copyright Royalty Tribunal adopted by the Office on December 22, 1993. The Office is seeking comments on these interim rules, which will govern the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993 until final regulations are adopted.

DATES: Effective May 9, 1994.

Written comments should be received by June 15, 1994. Reply comments should be received by July 15, 1994.

ADDRESSES: Fifteen copies of written comments should be addressed, if sent by mail, to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room LM-407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Public Law 103-198, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs), administered by the Librarian of Congress and the Copyright Office, for purposes of distributing royalties and adjusting royalty rates for the various compulsory licenses and statutory obligations of the Copyright Code. The CRT Reform Act, which was effective immediately upon its enactment, directed the Librarian and the Office to adopt the rules and regulations of the CRT found in chapter 3 of 37 CFR, 17 U.S.C. 802(d), and provided that the CRT's regulations were to remain in effect until the Librarian adopts "supplemental or superseding regulations." The Office adopted the CRT's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (1993). Today's interim regulations are the latest result of that rulemaking proceeding.

I. Notice of Proposed Rulemaking

On January 18, 1994, the Copyright Office of the Library of Congress published a Notice of Proposed Rulemaking (NPRM) establishing a new set of rules and regulations intended to revise those of the former CRT. The NPRM contained long and substantial revisions required by the dual structure of the royalty rate adjustment and distribution system created by the CRT Reform Act. Instead of a single administrative body (the CRT), the new system features a division of authority. The Librarian and the Copyright Office are responsible for doing the preliminary work necessary for the operation of both the distribution and the rate adjustment proceedings, including the organization and selection of the CARPs. The CARPs are given sole authority to determine the appropriate distribution of royalties and the royalty rates. Their determinations are later reviewed by the Librarian of Congress. Since the CRT's rules were not designed to implement a system such as this, we were obliged to institute this rulemaking proceeding.

The NPRM proposed removal of parts 301 through 311 of chapter III of 37 CFR and creation of subchapters A and B of chapter II. Subchapter A comprises the Copyright Office's rules and procedures, consisting of parts 201-211, which remain unchanged. New subchapter B, which is the subject of this rulemaking, comprises parts 251-259, and is devoted entirely to the rules and procedures of the CARPs. In the NPRM, part 251, the Copyright Arbitration Royalty Panel Rules of Procedure, consisted of proposed regulations to govern the organization of the CARPs, access to CARP meetings and records, rules governing the conduct and course of proceedings, and procedures applicable to rate adjustments and distributions. The NPRM also reserved a subsection for standards of conduct for arbitrators, and sought comment as to what the appropriate ethical and financial standards should be.

New part 252 proposed revised rules for the filing of claims to cable copyright royalties, modeled after the system used by the CRT for the filing of digital audio (DART) royalty claims. Parts 253 to 256—Use of Certain Copyrighted Works in Connection With Noncommercial Educational Broadcasting; Adjustment of Royalty Rate for Coin-Operated Phonorecord Players; and Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords—proposed only technical changes to the former CRT's rules. Like part 252, part 257—Filing of Claims to Satellite Carrier Royalty Fees—was modeled after the royalty claim procedures used by the CRT for DART. Finally, parts 258 and 259—Adjustment of Royalty Fee for Secondary Transmissions by Satellite Carriers and Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments—contained only minor technical amendments. Since the CRT Reform Act eliminated the jukebox compulsory license, 17 U.S.C. 116, and replaced it with a provision for negotiated licenses, the NPRM proposed elimination of the CRT's rules governing the filing of jukebox claims (formerly part 305 of 37 CFR).

Following issuance in the **Federal Register** of the NPRM, the Copyright Office invited the interested parties to a public meeting to discuss the proposed regulations concerning rules and procedures for Copyright Arbitration Royalty Panels. The public meeting was held on February 1, 1994, at Hearing room 921 of the Office of the former Copyright Royalty Tribunal. More than 50 individuals attended; comments were noted in an unofficial transcript and became part of the Administrative Record.[1] Written comments on the proposed rulemaking were due on or before February 15, 1994. Both oral and written comments are reflected in our current proceeding.

The Office received a total of 11 comments.[2] Many parties filed joint comments, and some of the joint commentators also filed separate comments. The commentator groups for each of the 11 comments were as follows:

Recording Industry Association of America, Inc and the Alliance of Artists and Recording Companies, Inc. (referred to collectively as "RIAA/AARC");

[1] Individuals wishing to inspect the unofficial transcript of this meeting may contact the Copyright General Counsel's Office at (202) 707-8380.

[2] The first ten comments were filed on time. The 11th comment, from the Public Broadcasting Service, was filed April 21, 1994, more than two months late, and included a motion for leave to file the comment. The Copyright Office sees no reason why consideration of the comment should be denied, and we are therefore granting PBS' motion and considering the views expressed in the comment for this rulemaking.

National Music Publishers Association and the Harry Fox Agency (collectively "Music Publishers");
Electronic Industries Association ("EIA");
American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (collectively "Performing Rights Societies");
United Video Division of United Video Satellite Group, Inc. ("United Video");
National Cable Television Association ("NCTA");
Program Suppliers, Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Copyright Owners");[3]
Program Suppliers ("Program Suppliers");
Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Certain Copyright Owners").
Gospel Music Coalition and Copyright Management, Inc. (collectively "Gospel Music");
Public Broadcasting Service ("PBS").

II. CRT Precedent and Pending Matters

The NPRM addressed a significant preliminary issue: How the Copyright Office should deal with matters that were pending before the CRT at the time of its elimination. The Office stated that it was "of the firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal" and that it was therefore making a "preliminary finding that all proceedings pending before the Tribunal at the time of its elimination were terminated at that time." 59 FR 2551 (1994). Parties wishing to have pending matters considered by either the Office, or the CARPs, or both, would have to resubmit the matters to the Office. *Id.*

The Office went on to discuss the precedential effect, if any, of orders and rulings of the Tribunal issued in proceedings that were pending before the Tribunal at the time of its termination. We concluded:

> The Office has no intention of questioning or reopening matters decided by the former Tribunal with respect to ongoing proceedings. However, we understand that the termination of pending Tribunal proceedings and the requirement of new filings will likely raise again some of the issues previously decided by the Tribunal. The Copyright Office of the Library of Congress makes a preliminary finding that, while we will look to the Tribunal's decisions and orders for guidance, neither the Office nor the Copyright Arbitration Royalty Panels are legally bound by those decisions. All legal issues related to proceedings pending before the Tribunal at the time of its elimination may therefore be resubmitted to the Copyright Office and, where appropriate, to the Arbitration Panels for consideration. *Id.*

We also noted in a footnote to this paragraph:

> The Copyright Office acknowledges that it is of course bound by rate adjustments and distributions that the Tribunal had conducted and concluded before its elimination. Thus, for example, the Office will not entertain any petitions to reexamine cable distributions for years earlier than 1990.

Id. at fn. 1.

These statements concerning the refiling of pending matters, and the possible effect as legal precedent of CRT rulings in pending proceedings, drew comments from two parties. The Copyright Owners favored the Office's position that all pending CRT matters terminated with enactment of the CRT Reform Act and would have to be refiled with the Office, the CARPs, or both. Copyright Owners, comment at 2. They noted that the largest single matter to be affected by this policy decision is the 1990 cable distribution, and asked that the parties to that proceeding be allowed to resubmit their cases with the Copyright Office, but with two qualifications. First, according to the Copyright Owners, the "parties should be permitted to comment on the appropriate dates for submittal of the 1990 cases and the start of the 1990 hearing before a panel." *Id.* at 3. Second, they asked that the parties in the 1990 distribution not be restricted to evidence submitted to the CRT: in other words, that they be allowed to update their cases in their filings with the Office rather than being bound by what they previously submitted to the Tribunal. *Id.* at 3–4.

On the issue of rulings by the CRT in pending proceedings, the Copyright Owners agreed in principle with the Office's preliminary finding that these CRT rulings are not binding, but suggested "slight changes to the phrasing of the discussion." *Id.* at 4. According to the Copyright Owners, the NPRM was unclear as to whether the Office's statement—that neither it nor the CARPs are bound by CRT rulings—applied only to matters pending at the time of the CRT's termination, or whether it was intended to apply to all CRT decisions. If the language in the NPRM was intended to refer to all CRT rulings, then the Copyright Owners argued that it is contrary to the intent and language of 17 U.S.C. 802(c). *Id.* at 4–5.

RIAA/AARC also questioned the NPRM's statement regarding treatment of CRT precedent. Their comments suggest that they interpret the NPRM as asserting that the Office and the CARPs are free to ignore CRT precedent in all cases. RIAA/AARC, comment at 1. RIAA/AARC appears to be arguing that any and all decisions of the CRT—not only those in concluded matters but also those in matters pending on or before December 17, 1993—represent legal precedent that is binding on the Office and the CARPs. *Id.* at 2.

On reexamination of the NPRM, and especially in light of these comments, we have to admit that our discussions both of the refiling of pending matters and the legal effect of CRT decisions were unclear. These are extremely important issues, and we will try to clear up the confusion here.

First of all, the Office restates its "firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal." 59 FR 2551 (1994). Second, we adhere to the policy determination that any proceeding still pending before the CRT on the date of its elimination, December 17, 1993—whether it involved rate adjustment, distribution, rulemaking, or administration—terminated as of that date. The legal effect of that termination is that the proceeding has ceased to exist, and that any rulings or decisions made by the Tribunal during the proceeding are null and void and without any binding effect, as precedent or otherwise, on the Copyright Office, the CARPs, or the parties.

In cases where a proceeding was terminated by operation of the CRT Reform Act on December 17, 1993, the

[3] The parties comprising the Copyright Owners derive their names from their "Phase I" categories in the former Tribunal's cable royalty distribution proceedings. The Program Suppliers are more than 100 producers and distributors of syndicated series, movies, and television specials represented by the Motion Picture Association of America. The Joint Sports Claimants consist of Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association. NAB represents claiming television and radio stations. PBS represents claiming member television stations and producers of public television programs. ASCAP, BMI and SESAC are three performing rights societies, also known as the Music Claimants, representing their members and affiliates. The Devotional Claimants consist of several producers and syndicators of religious programming. The Canadian Claimants represent Canadian programs broadcast by Canadian television stations. NPR represents its claiming member radio stations.

parties will be obliged to refile in the Copyright Office in accordance with these new CARP regulations, and present their arguments and, as a general rule, their evidence,[4] as if there had never been a proceeding before the CRT. Parties to the 1990 cable distribution are not bound by their earlier filing with the CRT, and may refile their cases and evidence as they see fit.[5]

Section 802(c) of the Copyright Code requires the CARPs to "act on the basis of * * * prior decisions of the Copyright Royalty Tribunal." We emphasize, however, that this requirement applies only to proceedings that were concluded by the Tribunal. For example, CRT rulings from the 1989 cable distribution have precedential effect because the 1989 distribution is a concluded proceeding, but rulings made during the 1990 cable distribution are without precedential effect.

We should add that, although rulings and orders from proceedings that were pending before the CRT at the time of its elimination do not constitute binding precedent, the Copyright Office will review those rulings and orders for information and guidance if the same issues arise during the course of a refiled proceeding, and will call them to the attention of the CARP.

There is an important distinction to be made here. What we have said so far applies to cases where a proceeding was underway at the CRT before December 17, 1993, except for claims to royalties filed with the CRT before its elimination. Royalty claims are required to be filed during specific time periods set by the Copyright Code, and any valid claims filed with the CRT before the statutory deadlines, and still pending on December 17, 1993, are unaffected by the new law. For example, the Code requires claims for DART royalties to be filed in January and February of each year with respect to royalties from the preceding calendar year. 17 U.S.C. 1007(a)(1). Claims to 1992 royalties had to be filed with the CRT by February 28, 1993. It is not now necessary to refile those claims with the Copyright Office, even though 1992 DART royalties have yet to be distributed. The Copyright Office has received from the CRT all claims to 1992 DART royalties that had been filed with the Tribunal, and it is therefore unnecessary, and without legal effect, to refile those claims with the Office.

Finally, in connection with DART filings, an issue raised by one of the commentators brings up questions related to those we have been discussing. The comment of the Performing Rights Societies contests the validity of the rule proposed in § 259.2 of the NPRM, which would require a performing rights society "* * * to obtain from its members or affiliates separate specific and written authorization signed by members, affiliates or their representatives to file claims to the Musical Works Fund * * *". Performing Rights Societies, comment at 1. This rule was promulgated by the CRT on October 18, 1993, and, as directed by the CRT Reform Act, the Office adopted it in its December 22, 1993, regulation. 58 FR 67690 (1993). Our NPRM did not propose to amend the regulation beyond renaming it and assigning it a new section number (§ 259.2). The Performing Rights Societies filed a petition for reconsideration of the rule with the CRT on November 3, 1993, before the Tribunal was terminated, and are now asking for Copyright Office consideration of the question in the context of this rulemaking. Gospel Music has filed an opposition. Gospel Music, comment at 1–3.

Although referred to as a "comment," the letter from the Performing Rights Societies is more in the nature of a petition to address the issue anew. They say that they wish "to petition to reopen the Tribunal's former rulemaking proceeding," and to have the matter addressed by the Copyright Office. The CRT had adopted a rule contrary to the Performing Rights Societies' petition; if the Societies had not petitioned the CRT for reconsideration, or if the CRT had acted one way or the other on the reconsideration request before it expired, we would consider the matter of the petition settled. As things stand, however, the petition for reconsideration was a pending CRT matter, and the Copyright Office will consider the Performing Rights Societies' "comment" as a separate petition for rulemaking, not as part of this rulemaking proceeding. The "comment" of Gospel Music will be treated as an opposition to that petition. At a later date we will publish notice of a separate rulemaking in response to the Performing Rights Societies' petition, and will invite interested parties to comment at that time. Section 259.2, as adopted in 58 FR 67690 (1993) and renamed and renumbered in this rulemaking, remains in effect until the conclusion of the separate proceeding.

III. Interim Regulations

Today's interim regulations reflect a comprehensive review of the entire body of the former Tribunal's rules and regulations, and a thorough analysis of the new procedures needed to implement the bifurcated system of ad hoc arbitration panels administered by the Librarian of Congress. The comments included a number of suggestions and proposed amendments, most of which were constructive and many of which we have adopted. In general the commentators were supportive of the Office's overall approach and most of the language in the NPRM.

It was the consensus of the parties at the February 1, 1994, public meeting that a reply period for comments on the proposed rules would be desirable. At the time of the public meeting we thought it would be impossible to provide periods for reply comments addressed either to the responses to the NPRM or to these interim regulations; this was because the CARP infrastructure must be in place before proceedings can begin, and one of the deadlines for starting DART distribution proceedings was supposed to fall on March 30, 1994.[6] On further consideration, however, the Office concluded that it would be virtually impossible to carry out the necessary procedures for appointing arbitrators before that date, and we issued a notice postponing the deadline, see 59 FR 9773 (1994) (postponing time period for declaration of controversy with respect to 1993 DART royalties to June 30, 1994). Even so, there is still the need to implement the CARP rules immediately, and to begin the screening and selection of potential arbitrators.

In order to get revised regulations into effect immediately and, at the same time, to offer an opportunity to see how they work in practice and to elicit meaningful comments and suggestions, the Office is adopting today's regulations on an interim basis.[7] All

[4] A question was raised in the February 1, 1994, meeting as to the possibility, when the 1990 cable distribution proceedings are initiated by a CARP, of incorporating by reference, rather than completely refiling, one or more long documents already filed by a party in the suspended CRT proceedings. We agree that, to avoid wasteful and needless duplication, the CARP should have the prerogative to permit incorporation by reference.

[5] As recommended in the comments of the Copyright Owners, we will at a later date invite the parties to the 1990 cable distribution to comment on when the proceeding should commence before the CARP.

[6] Sec. 1007(b) of the Copyright Code states that, "Within 30 days after the period established for the filing of claims [January-February] * * *, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalties * * *", and sec. 1007(c) states that, if a controversy exists, "the Librarian shall * * * convene a copyright arbitration royalty panel to determine the distribution of royalty payments."

[7] These interim regulations consist of the earlier "interim regulations" adopted by the Copyright

proceedings before the Office and the CARPs will be governed by the December 22, 1993, interim rules as amended by these interim rules, unless and until they are further amended or superseded. Comments are due on June 15, 1994, and reply comments on July 15, 1994, whereupon the Office plans to make another comprehensive review and analysis before adopting final regulations.

The Librarian and the Office are committed to creating the fairest, most efficient possible system for adjusting royalty rates and distributing royalties. We believe that the rules and procedures adopted today will work, but during the coming months we will continue to monitor the CARP experience very closely and to identify any problems that need solving and any improvements that can be made.

The following is a section-by-section summary of the amended regulations, together with a discussion of the applicable comments on the corresponding provisions of the NPRM.

(a) *Part 251—Copyright Arbitration Royalty Panels Rules of Procedure*

Part 251 contains most of the rules and procedures governing the operation of the CARPs, and therefore received the greatest number of observations and suggestions from the commentators.

(1) *Status of certain DART proceedings.* As a preliminary matter, it is important to consider the scope of part 251 with respect to digital audio proceedings under chapter 10 of the Copyright Code. It is the Office's reading of the CRT Reform Act that neither of the following is to be a CARP proceeding:

(*i*) the proceeding raising the maximum rate for digital audio tape royalties which, under 17 U.S.C 1004(a)(3), is to be handled solely by the Librarian;

(*ii*) the arbitration proceeding under 17 U.S.C. 1010 to determine if a digital audio recording or interface device is subject to royalty payments. We reach this conclusion based on the 1993 amendments to section 801 of the Copyright Code. Former section 801(b)(4), which assigned to the Tribunal the authority to distribute DART royalties, and "to carry out its other responsibilities under chapter 10," was deleted; except for DART royalty distribution, which reappears in the new section 801(b)(3), that former authority was not reassigned to the Copyright Arbitration Royalty Panels. For these reasons the Office has not proposed any regulations in this rulemaking as to the raising of the DART maximum royalty payment or the status of a DART device. These are matters that will be covered later in separate DART regulations.

We invite comments from the parties on the following:

Is our interpretation concerning the status of DART proceedings under the CARP legislation correct?

If it is correct, to what extent does the Office have authority to adopt regulations governing standards of conduct in DART proceedings?

(2) *Organization of Part 251.* Part 251, which tracks the original format of the former Tribunal's regulations, is divided into seven subparts, identified as subparts A through F.

Subpart A, entitled "Organization," describes the composition and selection process for the CARPs. Subparts B and C—"Public Access to Copyright Arbitration Royalty Panel Meetings" and "Public Access to and Inspection of Records"—remain virtually the same as the former Tribunal's rules, with only a few minor technical amendments. Subpart D, "Standards of Conduct," consists of a completely new set of rules prescribing the financial and ethical requirements for arbitrators, and governs *ex parte* communications, billing, sanctions for misconduct, and other matters involving ethical standards. Subpart E, "Procedures of Copyright Arbitration Royalty Panels," prescribes the procedures to be followed by the CARPs in conducting proceedings, including those governing submission of evidence, conduct of hearings, reports of the CARPs, and orders of the Librarian. Subparts F and G—"Rate Adjustment Proceedings" and "Royalty Fee Distribution Proceedings"—provide certain additional requirements inherent in rate adjustment and distribution proceedings, and contain only a few changes of the former Tribunal's rules.

The following summarizes the additions and changes in the various subparts of part 251.

(b) Subpart A—Organization

As the NPRM explained, subpart A was in need of complete revision because of the differences between the statutory organization of the CRT and that of the CARPs. In addition to the changes proposed in the NPRM, these interim regulations incorporate additional revisions based on the comments and our own further review.

(1) *Official address.* The Copyright Office has secured a special Post Office box for receiving mail relating to the CARPs and any other matters arising under subchapter B of chapter II of this title (37 CFR). As the NPRM said, establishment of a single official address is important, since arbitration proceedings will not necessarily take place at a single location, within the Library of Congress or elsewhere. There may sometimes be an incentive for parties to deliver filings directly to the actual location where a CARP is meeting, but, for the reasons summarized in the NPRM, we believe it would be a mistake to allow official filings to go to locations different from the mailing address specified in these regulations.

Therefore, all filings required by this subchapter, if sent by mail, should be marked for delivery to the official address contained in § 251.1. The same address should be used for all correspondence or inquiries concerning the CARPs, distributions of royalties, rate adjustments, and other matters arising under this subchapter B. Note that, under § 251.44, the CARPs are required to establish procedures under which filings may be delivered directly to them, as long as a copy is also delivered to the official address.

(2) *Purpose of the CARPs.* Section 251.2 describes the royalty distribution and rate adjustment responsibilities of the CARPs with respect to the various compulsory licenses and statutory obligations established under the Copyright Code.[8] The Copyright Owners requested deletion of the word "television" from the phrase "cable television" in subsection (e), pointing out that fee distributions for cable retransmissions under sections 111 of the statute cover radio as well as television distant signal carriage. We have corrected subsection (e) and have amended later references to "cable television" to read simply "cable."

(3) *List of arbitrators—(i) The NPRM proposals.* To facilitate the process for selecting arbitrators, the NPRM proposed creation of a yearly list of qualified arbitrators obtained from professional arbitration associations or organizations. The association or organization would supply the names of

Office on December 22, 1993, 58 FR 67690 (1993), as amended by today's changes.

[8] It is significant that, while adjustment of royalty rates for the cable compulsory license is one of the duties of the CARPs listed in § 251.2, there is no similar provision for the satellite carrier compulsory license. This is because the current satellite rates were adjusted in 1992, before enactment of the CRT Reform Act, and the satellite carrier license is due to expire on December 31, 1994. Congress is currently moving legislation to extend the duration of the license and provide for another arbitrated adjustment of the royalty rates. The Office anticipates that, when and if the pending satellite bill is enacted, it will include a provision making the satellite arbitration a CARP proceeding. In that event we will amend these rules to reflect the legislative changes.

arbitrators meeting the qualifications set out in § 251.5, together with a brief summary of each person's educational and employment history, qualifications, and "any other information which the professional arbitration association or organization may consider relevant." The Librarian would then publish the list of qualified candidates in the **Federal Register**, and this would constitute the master list from which all selections for CARPs would be drawn for the calendar year.

(*ii*) *Comments of copyright owners.* The Copyright Owners recommended several changes to § 251.3 as proposed in the NPRM. Copyright Owners, comment at 16–19.

First, they suggested that the Copyright Office solicit names of qualified arbitrators from at least five professional arbitration associations or organizations, including organizations that list former judges. Although, according to their predictions, the cost of an arbitration organization's list will be approximately $1,000, they "think that it is appropriate for a reasonable amount of money to be spent compiling these lists." *Id.* at 16. They also recommended consultation with not-for-profit arbitration associations that make no charge for their services.

Second, the Copyright Owners suggested that the master list be confined to 50 names. This, they said, "should provide a large enough group from diverse sources to avoid repeating the solicitation process in any one year." *Id.* at 17.

Third, to assist in the control of costs of the arbitration process—a concern voiced by most of the commentators—the Copyright Owners suggested that § 251.3(a) be amended to expand the required information provided to the Librarian by professional arbitration organizations; they recommended that this information include a description of the potential arbitrators' anticipated hourly, daily, or annual fees, including per diem expense requirements. *Id.* at 18.

Fourth and finally, the Copyright Owners sought amendment of § 251.3(a)(2), which would require arbitration associations and organizations to provide "a brief summary of the member's employment history." They took the position that a brief summary would not provide adequate information upon which to formulate objections, and asked for an amendment requiring information on the potential arbitrators' "areas of expertise, general nature of clients represented and types of proceedings in which the member represented clients." *Id.* at 19.

(*iii*) *Changes in § 251.3.* On the whole we think the comments and suggestions on lists of arbitrators make good sense, and we have adopted most of them with modifications and additions of our own.

(*A*) *Change in date for first lists provided by arbitration associations.* Subsection (a) is amended by deleting "March 1, 1994" and replacing it with "on or before May 6, 1994" as the date the Office is to receive from arbitration associations the lists of qualified arbitrators in accordance with § 251.3. We are providing a longer period in which to compile this year's lists since we could not complete the process of selection by March 1, 1994, and since the beginning of DART royalty distribution has been postponed from March 30 to June 30, 1994. See 59 FR 9773 (1994).

(*B*) *References to "member" stricken.* In the NPRM, § 251.3 referred throughout to the persons to be included in the list as "members" of the associations and organizations submitting their names. It now seems clear that this term would be questionable or inaccurate in some cases. We have therefore substituted the phrase "persons qualified to serve as arbitrators" and the term "person" in the subsection.

(*C*) *Public availability of information.* The NPRM left open the question of whether the information provided by the arbitration associations or organizations under subsection (a) would be available to the public. This interim regulation has been amended to make clear that this information will be available to the public for inspection and copying, but only with respect to those potential arbitrators whose names are published in the Librarian's list.

(*D*) *Employment or professional affiliation history.* As suggested in the comments, we have amended subsection (a)(2) to call for more detailed information about the person's professional career and expertise. The interim regulation also calls for information about clients represented and types of proceedings in which the person has been involved, but only if that information is available to the association or organization submitting the name. We recognize that a potential arbitrator's client base is not always the type of information available to a professional arbitration association or organization, and that potential arbitrators may be reluctant to disclose that kind of information publicly. Arbitrators will be required to disclose this and other information to the Librarian as part of their confidential financial disclosure statements, see § 251.32.

(*E*) *Disclosures of fees to be charged.* We agree with the points made in the comments: That the costs of the arbitration process should be kept as low as possible, that arbitrators' fees will comprise a major part of the costs, and that the rates a particular arbitrator will charge are an important element in the selection process. We have therefore added a new subsection (a)(5) calling for detailed information about the arbitrator's rates for fees. This information should include the basis on which the fee is to be computed (hourly, daily, etc.), any variation on that basis (overtime, etc.), and the amount of the basic rate. (As further discussed in the preamble to § 251.38, recovery of expenses will be available only to the arbitrators coming from outside the Washington, DC area, and then will be limited to the Government per diem rate.)

(*F*) *Date of publication of arbitrator list.* For the reasons mentioned above in connection with subsection (a), subsection (b) now calls upon the Librarian to publish the arbitrator list after May 6, 1994, rather than after March 1. In future years the lists will be published after January 1.

(*G*) *Number of names on arbitration list.* The Copyright Office agrees with the comments of the Copyright Owners that the number of names on an arbitrator list should not be left completely open, but we do not agree that the regulations should set an exact number. We believe that the interests of diversity will be served by publishing a list of at least 30 arbitrators, as opposed to an exact number; this should provide the flexibility necessary to the publication of a balanced list, which in some years might require more than 30. As a practical matter, the Office will try to produce a list that generally contains about 50 names. However, since we do not anticipate circumstances that would require a list with more than 75 names, we are adopting that number as the upper limit.

(*H*) *Number of arbitration associations or organizations.* The Copyright Owners also asked that the regulations quantify the number of associations or organizations from which the Librarian will obtain lists of potential arbitrators, and recommended that the number be set at five. We agree that the number should be quantified and that under the statute it must be more than one, but we think five is too many. Several of the arbitration associations listed by the Copyright Owners in an appendix to their comment each represent several thousand arbitrators. The Office believes that three associations or organizations

are likely to provide more than enough eligible candidates in most cases. The rule as now written, we think, is flexible enough to provide diversity, including the presence of former judges, on the arbitrator list.

(4) *Arbitrator list: Objections.* Under § 251.4, objections to individuals on an arbitration list published in the **Federal Register** in accordance with § 251.3 may be lodged with the Librarian, but only by parties to a particular proceeding and only during a designated 30-day time period that will begin and end before the proceeding starts. In the case of rate adjustment proceedings the objection period coincides with the pre-proceeding period for consideration of possible settlements provided by § 251.63. For royalty distribution proceedings the period for objections is the same as the period for precontroversy motions and objections prescribed by § 251.45. In both cases the Librarian's notice in the **Federal Register** will set out the inclusive dates of the objection period. A party to the proceeding may lodge objections to one or more of the potential arbitrators on the Librarian's list; the grounds for each objection must be stated plainly and in detail.

(i) *Comments on objection procedures—(A) RIAA/AARC.* In their comments RIAA/AARC urged that, instead of tying the objection procedure to specific proceedings, the regulations provide for an objection period to come before publication of the annual list of arbitrators. RIAA/AARC, comment at 2–3. In their view, the proposed system of confirming objections to a period before the proceedings begin would expose the objecting party to—

> * * * the risk of having arbitrators against whom they had just filed objections selected for the proceeding. This would inevitably have a chilling effect on the parties, thereby negating the purpose of the proceeding.

According to RIAA/AARC, a procedure under which potential parties to any proceedings could lodge objections to names proposed for the master list before it is published in final form would have the advantage of expanding overall participation by the parties in the process of choosing arbitrators. *Id.* at 3.

(*B*) *Music publishers.* The Music Publishers had an alternative objection process to propose. They took the view that the NPRM's disclosure requirements for arbitrators were insufficient, and for this reason they recommended that the Librarian publish a "select list" of 10 to 15 names before proceedings begin, with the requirement that those potential arbitrators file a financial disclosure statement. Under this plan, parties to the proceeding would be allowed to review the statements and then file their objections, if any. Music Publishers, comment at 5.

(*ii*) *Changes in § 251.4.* The Office is adopting amendments to § 251.4 resulting from our decision not to provide any pre-proceeding period for discovery (discussed below in connection with §§ 251.45 and 251.63). Under the changes, the time period for filing objections to arbitrators has been reduced to 30 days. After consideration, however, we are unable to agree with the recommendations of either the RIAA/AARC or the Music Publishers. The RIAA/AARC proposal would require publication of a preliminary list that would be open to objections, followed by publication of a "clean" list of arbitrators whose names provoked no objections or who were found by the Librarian to be acceptable despite the objection. This would require substantial added administrative burdens, costs, and delays, and the "preliminary" lists would have to be long enough to insure a final list of at least 30 names.

We are not convinced that the procedure we are adopting will produce any chilling effect on participation by the parties. As we stated in the NPRM, 59 FR 2552 (1994), no peremptory challenges will be allowed, and all objections must be fully substantiated. Serious, well-grounded objections will certainly disqualify an arbitrator from selection to a CARP. Where the objections are not sufficient to prevent an arbitrator from being selected, the ethics rules of subpart D should be adequate to prevent biased decisions resulting from an objection.

Again, publication of "select" lists as proposed by the Music Publishers would be an additional and costly administrative burden, and would essentially eliminate the need for a master list. The conduct rules of subpart D of this interim regulation will require individuals appearing on the arbitrator list to file financial disclosure statements with the Librarian, and this requirement should satisfy the Music Publishers' primary concern.

(5) *Qualifications of Arbitrators.* Under § 251.5, as proposed in the NPRM, an individual must possess three basic qualifications to serve as a CARP arbitrator: Admission to the practice of law; 10 or more years of legal practice; and experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes. This proposal drew considerable comment from the parties, and there was substantial disagreement among them as to whether the arbitrators should all be lawyers.

(*i*) *Comments on requirement for legal qualifications—(A) Certain copyright owners.* A group identified as "Certain Copyright Owners"[9] favored adoption of the lawyer requirement because, they said, lawyers and judges have experience in operating under procedural and evidentiary rules and applying precedent. Certain Copyright Owners, comment at 3. They argued that there is "no need for panel members to possess any substantive expertise beyond knowledge and experience in the adjudication and resolution of disputes." *Id.* at 4. If non-lawyers were allowed to serve as arbitrators there might be some encouragement for the selection of experts such as economists; this, according to the comment, could "distort the process" by permitting the expert to "dominate the panel's consideration of any disputed questions within his or her area of expertise," and could create the potential for "unilateral decisionmaking." *Id.* at 4–5.

(*B*) *Program suppliers.* Program Suppliers believed that non-lawyers should be allowed to serve as arbitrators, although they proposed that each CARP include at least one lawyer. Program Suppliers, comment at 2. They welcomed the expertise a non-lawyer might bring to the arbitration process. In their view the participation of a non-lawyer could promote collegiality in the decision-making process, and they noted that the CRT Reform Act contains no provision forbidding consideration of non-lawyers. *Id.* at 6–7.

(*ii*) *Comments on selection of former judges.* The comments of Certain Copyright Owners, Program Suppliers, and Copyright Owners generally are agreed that the Librarian should give strong consideration to the selection of former judges as arbitrators. They proposed that § 251.5(c) be amended to read that a potential arbitrator must have "[e]xperience in conducting arbitration proceedings, or facilitating *or presiding over* the resolution and settlement of disputes." (emphasis added). Certain Copyright Owners, comment at 5; Program Suppliers, comment at 8; Copyright Owners, comment at 21. This amendment, they said, would make clear that individuals with judicial experience are qualified to serve on CARPs.

(*iii*) *Comments on continuity of membership.* There was considerable disagreement on the issue of continuity

[9] This group was comprised of Sports Claimants, the NAB, PBS, NPR, Devotional Claimants, and Canadian Claimants.

of membership from one CARP to another.

(*A*) *Copyright owners.* Noting Chairman Hughes' floor statement on the desirability of continuity, the Copyright Owners argued that having the same arbitrators on multiple CARPs is "essential" to the efficient operation of the royalty rate adjustment and distribution process. Copyright Owners, comment at 20. In their view, continuity would "ensure consistency in the decisionmaking process," thereby fostering the likelihood of settlement among the parties to a proceeding. *Id.* To encourage continuity, the Copyright Owners proposed that § 251.5 be amended by adding a new subsection (d) to include an additional factor in the selection process, giving preference to any arbitrator who had previously served on a panel:

> (d) In addition, arbitrators who have previously served on a CARP should be given a preference for selection to a subsequent CARP; provided, however, that no arbitrator shall be selected as a member of a CARP following the sixth anniversary of the date of his or her first selection as a member of a CARP.

Id. at 20–21.

(*B*) *Certain copyright users.* Commentators representing two groups of copyright users opposed the principle of continuity on the CARPs. NCTA argued that creating a preference based on service on an earlier CARP "could favor those, such as copyright owners, who regularly participate before the panels." NCTA, comment at 2. United Video echoed NCTA's concern, stating its belief that the creation of ad hoc arbitration panels was intended as Congress' remedy to the insular nature of the CRT:

> As a practical matter, the licensees have no desire to see the CRT recreated in the guise of "stable" CARPs. Such "stability" would mean that copyright owners can yet again develop a body of mystical, impenetrable, unreasoned standards into which compulsory licensees are plunged every five years. . .".

United Video, comment at 2. Both NCTA and United Video argued that, at the very least, the Copyright Office should ensure that arbitrators who have served on CARPs in distribution proceedings are not also chosen to serve on CARPs in ratemaking proceedings. NCTA comment at 2; United Video, comment at 2.

(*iv*) *Amendment of § 251.5.* The Copyright Office has considered the varying viewpoints of the parties on qualifications of arbitrators, but we have decided to adopt § 251.5 as proposed with only one technical amendment to subsection (a). That subsection is intended to require arbitrators to be admitted to the practice of law. Since membership in a bar association is not synonomous with admission to the practice of law, we are broadening the requirement accordingly.

(*A*) *Legal qualifications.* On the issue of whether arbitrators should be lawyers, we continue to believe that the adjudicatory nature of CARPs requires arbitrators to have experience in operating under procedural and evidentiary rules, applying precedent, and evaluating the legal significance of conflicting evidence. The importance of legal training is underscored by the relatively short period (180 days) allowed for conducting proceedings which are often long and complicated. Arbitrators will be called upon to decide substantive and procedural matters arising both during the hearings and in motions and pleadings, and there would be little or no time to train non-lawyers in how to handle them.

(*B*) *Former judges.* The Copyright Office believes that § 251.5 as drafted is certainly broad enough to allow appointment of former judges. Subsection (c), which is taken directly from section 802(b) of the Copyright Code, requires an arbitrator to have experience either in conducting arbitration proceedings or in facilitating the resolution and settlement of disputes. Unlike the Copyright Owners, we believe that experience in "facilitating the resolution and settlement of disputes" includes judges as well as mediators, and that the proposed "presiding over" language is unnecessary. The Office is therefore adopting subsection (c) as proposed.

(*C*) *The question of continuity.* Neither the Copyright Office nor the Library has had experience in selecting arbitrators under circumstances such as these, and for the present we think it is important to maintain flexibility in the selection process. The CRT Reform Act grants the Librarian considerable discretion in selecting arbitrators, and he intends to exercise that discretion to guard against any possibility of bias or undue influence. We therefore believe it would be a mistake to be bound to any system of preferences or exclusions in the selection process at this time. The Congress expressly chose not to make continuity among panel members a requirement. See 139 Cong. Rec. H10973 (daily ed. November 22, 1993) (floor statement of Rep. Hughes) ("The Librarian certainly has discretion to chose [sic] individuals willing to serve for 6 years. The Senate decided not to make this a requirement, however, and I agree with that decision."). At the same time, we understand that under certain circumstances, especially in the case of distribution proceedings, continuity could have important advantages.

Without expressing it as a binding policy or writing it into the regulations as a requirement, we agree with Chairman Hughes that, in choosing arbitrators for future proceedings, the Librarian should look to the quality of service and soundness of decision-making an individual has displayed as a member of an earlier CARP. We also agree that, in the selection process for a rate-adjustment CARP, the familiarity a former arbitrator in a distribution proceeding has demonstrated with respect to particular parties and their arguments should be taken into account in weighing the possibility of bias. Experience with the CARPs will help to determine, later on, whether some system of preferences or exclusions should be written into these regulations.

(6) *Composition and selection of CARPs: Quorum requirements.* Section 251.6 of the NPRM described the procedure for selecting the members and chairperson of a CARP, and dealt with quorum requirements under various circumstances. Subsection (e) of the NPRM provided:

> If for any reason one or more of the arbitrators selected by the Librarian is unable to serve during the course of the proceedings, the Librarian shall promptly appoint a replacement: Provided, that once hearings have commenced, no such appointment shall be made and the remaining arbitrators shall constitute a quorum necessary to the determination of the proceeding.

This provision would leave the possibility of a single arbitrator deciding an entire proceeding.

(*i*) *Comments of copyright owners.* To avoid the dangers inherent in a rule that would allow a quorum of one, the Copyright Owners proposed that subsection (e) be revised to read:

> (e) If for any reason two of the arbitrators selected by the Librarian are unable to serve during the course of the proceedings, the Librarian will suspend the proceedings until at least one new arbitrator is selected. Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

Copyright Owners, comment at 22.

(*ii*) *Amendment of § 251.6.—(A) Quorum requirement.* The Copyright Office shares the Copyright Owners' concern, and is therefore adopting the requirement that two arbitrators constitute a quorum necessary to the determination of a proceeding. Should a CARP panel be reduced to one serving arbitrator for any reason, it would be necessary either to replace one or both of the other arbitrators or terminate the

proceeding. However, there are inherent problems in adopting a process of replacing arbitrators, especially after hearings have begun.

(B) *Problems presented by replacement of arbitrators.* Our concerns go to the heart of the fairness of the proceedings and compliance with the requirements of the Administrative Procedure Act. If a new arbitrator is selected midway through hearings in a proceeding, he or she will lose the benefit of earlier live testimony, and rights of parties to the proceeding under the APA could be compromised. We also recognize that proceedings cost a great deal of money, and that the parties may be reluctant or financially unable to repeat the hearing process in its entirety for the benefit of a new arbitrator. One partial solution to the fairness problem might be to require all CARP hearings to be recorded on videotape. As an alternative to terminating the proceedings completely and starting the whole process anew, videotaping might provide substantial monetary savings in the long run.

(C) *Compromise solution.* In an effort to ensure that a quorum of two will exist, and to provide rational, fair, and economical procedures for replacing arbitrators, including chairpersons, in various situations, the Copyright Office is adopting a compromise provision. Where one or two of the arbitrators has left a CARP panel, the Librarian of Congress may be called upon to suspend the proceedings (thus tolling the running of the statutory periods).[10] If the hearing has not yet begun, the Librarian is obliged to bring a CARP back up to its full complement of three members; but, if the hearing is underway, no replacement will be made unless necessary to provide the required quorum of two members.

(a) *Hearings Not Yet Begun.* If hearings in the proceeding have not yet begun and the CARP has fallen below its statutory three-person complement (two arbitrators selected by the Librarian and a third chosen—as member and chairperson—by the other two), the Librarian will suspend the proceeding and inaugurate a procedure to bring the CARP back up to three members. Where one or two vacancies are to be filled, and either or both of the vacant seats were previously occupied by arbitrators chosen by the Librarian, the Librarian will select the necessary replacement or replacements. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators will select the replacement. If there are two vacancies, and one was previously occupied by the chairperson, the Librarian will select one replacement, and that person will join with the remaining arbitrator to choose the replacement.

(b) *Hearings begun.* If hearings have begun, the Librarian will not suspend the proceedings and select replacements unless it is necessary to do so to achieve a quorum. In other words, if the hearing is underway with the full complement of arbitrators and one drops out, nothing need be done. However, if two of the three arbitrators drop out at once, or if the hearing is going forward with two arbitrators and one drops out, the Librarian will need to suspend the proceedings and select one new arbitrator (not two) to provide the necessary quorum.

Where the hearing has started and the CARP loses its chairperson, a problem arises since the Librarian has no authority under the statute to fill the chair of a CARP. The solution in this situation is to ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to decide between themselves which of the two of them will serve as chairperson.

A more serious problem arises from the fact that a new arbitrator in an ongoing hearing will not have had the benefit of hearing and seeing the earlier testimony and arguments. In an effort to accommodate the rights of the parties under the APA and, at the same time to save time and money, the interim regulation requires that the Librarian's selection of a replacement arbitrator in an ongoing hearing receive the unanimous written agreement of all parties to the proceeding. If the parties agree, the hearings will continue from the point of suspension; if not, the Librarian will terminate the proceeding and start the whole process anew.

(7) *Suspension of proceedings.* Several provisions of these interim regulations, including those on the replacement of arbitrators under § 251.6 and the removal and replacement of an arbitrator for misconduct under Subpart D, require the Librarian to suspend any ongoing proceedings long enough to make the necessary replacement or replacements. Upon considering the problem the Copyright Office has concluded that these regulations should also contain a section governing the conditions and procedures for suspensions, making clear in particular that suspension tolls the running of the 180-day hearing period or any other time period in effect. We have added this provision as § 251.8, at the end of subpart A.

Under subsection (a) of the new § 251.8, whenever an arbitrator must be replaced for any reason, the Librarian is obliged to order a suspension of the proceeding by notice to all parties in writing, to make the replacement expeditiously, and to give written notice to the parties of the resumption of the proceeding "from the time and point at which it was suspended." Subsection (b) is intended to deal with cases in which the Librarian is convinced that, because of temporary situations such as serious illness or personal tragedy affecting an arbitrator, it would be extremely difficult or impossible to continue the proceeding for the time being. In these situations, not involving replacement of an arbitrator, the proceeding may be suspended only with the written consent of all parties, and for a stated period of one month or less.

Section 251.8(c), which applies to all suspensions, provides that the suspension "shall result in a complete cessation of all aspects of the proceeding, including the running of any statutory period provided for completion of the proceeding." We believe it is necessary and important during the time of suspension to toll the periods provided for proceedings in the statute, particularly the 180-day period prescribed by 17 U.S.C. 802(e). The tolling provision is intended to allow sufficient time for selection of replacements without cutting into and reducing the full period the arbitrators will need for hearing the case and rendering a decision.

(c) *Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings*

Subpart C—Public Access to and Inspection of Records

The Copyright Office is adopting all of subparts B and C, as proposed in the NPRM, with changes regarding recordings and photographs at open meetings. The Copyright Owners requested a minor change in § 251.12, which governs the conduct of open meetings held by a CARP, to say that the right of a witness to withhold authorization of a recording of his or her testimony does not apply to the official transcript. We agree, but on further consideration we think § 251.12 could have been too strict in operation. We see no reason why the CARP proceedings should not be conducted with the greatest possible openness.

Section 251.12 now reads that the public and the news media will be able to take photographs and to make audio

[10] The Copyright Office has added a new § 251.8 to Subpart A dealing with suspension of proceedings and tolling of the running of statutory periods, including the 180-day hearing period. This new section is discussed below.

or video records of the proceedings, so long as the CARP is informed in advance and nothing is done to disrupt the proceedings. The permission of the participants in the proceedings would not be required.

(d) *Subpart D—Standards of Conduct*

The CRT Reform Act amended section 802(b) of the Copyright Code to provide that the "Librarian of Congress, upon recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter." The need to provide standards of conduct for arbitrators in these regulations is particularly important because the CARP arbitrators are not employees of the Federal Government. They are private individuals to whom controversies are being referred under this particular form of alternative dispute resolution. Since the established standards of conduct for government employees are not applicable to the CARP arbitrators, these regulations must adopt those and other standards in the specific provisions of part 251.

Instead of proposing specific regulations in our NPRM, we asked for recommendations as to what standards of conduct should apply to the CARP arbitrators.

(1) *Comments and recommendations.* Three of the written comments addressed standards of conduct.

(*i*) *RIAA/AARC.* The RIAA/AARC strongly supported a code of conduct. On the ground that the characteristics of CARP arbitrators are closest to those of administrative law judges, they recommended that the Office base its regulations on the "Model Code of Judicial Conduct for Federal Administrative Law Judges," and attached to their comment pertinent provisions of the Code. RIAA, comments at 3–4, and Appendix.

(*ii*) *Music publishers.* The Music Publishers also suggested that the Office adopt rules based on the "Model Code of Judicial Conduct," and emphasized that the rule should prohibit all ex parte communications with the CARPs. Music Publishers, comments at 10.

(*iii*) *Copyright owners.* The Copyright Owners advocated strict standards, noting that royalty distributions can involve hundreds of millions of dollars. They specifically recommended that the Librarian investigate persons under consideration as arbitrators for conflicts of interest, and that, if any conflicts are found to exist before or during the proceeding, the particular individual be disqualified. With respect to employment of a potential or actual arbitrator by any interested party, they recommended a pre-employment ban of five years and a post-employment ban of three years. In their view, however, current conflicts of interest or recent past employment with an interested party need not be disqualifying if the parties to the proceeding unanimously waive the disqualification. The Copyright Owners also recommended that strict regulations be adopted to prohibit ex parte communications, or any other appearances of impropriety, and to rule out unreasonable billing by the arbitrators. Copyright Owners, comments at 25–29.

(2) *Meeting with endispute representatives.* As the result of questions raised during an informal meeting of Copyright Office officials with two representatives from Endispute, an arbitration association, we have made some modifications to our sections on billing (§§ 251.3, 251.38, 251.54) and our definition of employment (§ 251.36). Those modifications are explained below in our discussion of each applicable section. A summary of our meeting with Endispute has been placed in the comment file of this docket and is available for public inspection.

(3) *Basic conclusions.* In formulating our interim rules for standards of conduct, the Copyright Office has considered the recommendations of the parties, and has incorporated some of them, as explained below. On the fundamental question of the model to follow, however, we have decided to base the rules on those promulgated by the Office of Government Ethics (OGE), rather than the codes of judicial conduct or codes governing administrative law judges. OGE's rules are more detailed and rely less on self-reporting or recusal. We believe it is important that the standards be clearly expressed so that the public is assured of fairness and the arbitrators know precisely what is expected of them. It is also important that, rather than merely expressing good intentions, the rules be enforceable and enforced.

(4) *Interim regulations on standards of conduct.* Part D of these interim regulations (§§ 251.30–39) reflects the Copyright Office's conclusions as to the general and specific standards to govern the conduct of CARP arbitrators. The following is a summary of these interim rules, and we solicit detailed comments on any or all of them.

(*i*) *Basic obligations of arbitrators.* Section 251.30 provides the basic obligations of the arbitrators in general terms. It is derived from Title 5, § 2635.101 of the rules of the Office of Government Ethics, as modified to meet circumstances applicable to the CARP arbitrators.

The general obligations set out in § 251.30 apply both to the arbitrators selected to preside in a particular proceeding and to the arbitrators who are listed as available but who have not yet been selected. They specify that arbitrators: Shall not use their position for private gain; shall not hold any conflicts of interest; shall not solicit or accept gifts from interested parties; shall not reveal nonpublic information; shall not give preferential treatment to any party, shall not engage in outside activities that conflict with their duties; shall not seek employment with any interested party; and shall endeavor to avoid all appearances of impropriety.

In establishing these general obligations, the Copyright Office has also incorporated provisions from the Model Code for Administrative Law Judges recommended by the RIAA/AARC. These provisions address the behavior of arbitrators at hearing: To maintain order and decorum, to be patient, dignified, and courteous to the parties and witnesses, and to dispose of business promptly. RIAA, comment at Appendix.

These general obligations are to be considered just as binding as the specific obligations that follow in §§ 251.31–38. They are meant to cover situations not anticipated by the specific sections, but which nonetheless would constitute a violation of ethical standards. Complaints based on these general provisions are as valid, and must be taken as seriously, as those based on specific obligations. While most of the general obligations have more specific counterparts in the obligations spelled out in §§ 251.31–38, some do not. One example is § 251.30(f), which prohibits bias on the part of an arbitrator. A specific rule on bias would probably be futile because it could not envision all possible situations; but, if supported, a charge of bias could be grounds for disqualification.

(*ii*) *Financial interests.* Section 251.31 specifies what constitutes a financial conflict of interest that would result in an automatic disqualification to serve. This section does not cover all areas of potential bias; it applies only to those that involve a current financial conflict and would result in automatic disqualification. Other areas of potential bias would be covered by the objection procedure in § 251.4, as discussed above in connection with that section and below in connection with these Standards of Conduct regulations.

(*A*) *Distribution proceedings.* Section 251.31 states that, in a distribution proceeding, the arbitrator may not have

a financial interest in any claimant to that proceeding, or in any copyright owner that ultimately receives royalties from a claimant to the proceeding, whether or not the claimant is party to a voluntary settlement. The reason for disqualifying anyone with a financial interest in a party that has already settled its dispute is that, since distributions are annual proceedings, the arbitrator might otherwise be tempted to insert precedent that could help that party in the following year's controversy.

As noted, the prohibition against financial conflicts applies more widely than merely to interests in claimants to the proceeding. It also covers interests in copyright owners who receive royalties from a claimant to the proceeding, such as a television producer who does not file a claim herself but receives royalties from a syndicator who does.

(*B*) *Rate adjustment proceedings.* In a rate adjustment proceeding the arbitrator may not have a financial interest in any copyright owner or user entity that would be affected by the outcome of the proceeding.

(*C*) *Definition of financial interest.* For purposes of both distribution and rate adjustment proceedings, § 251.31(b) defines "direct or indirect financial interest" to include employment and other affiliations, ownerships of securities, and deriving any income, however small, from an interested party. Section 251.31(c) makes two specific exceptions to the definition of "financial interest": (1) Where the individual's money is invested in a mutual fund or blind trust and he or she cannot control the investment decisions; and (2) where the individual is receiving fixed post-employment benefits that would not be affected by the outcome of the proceeding, such as benefits from health insurance or a pension.

(*D*) *Curing a conflict of interest.* Section 251.32(b) provides two ways to cure a conflict of interest: (1) The potential arbitrator may divest himself or herself of the interest that caused the disqualification; or (2) the parties may be asked to consider the nature and degree of the conflict and, if all parties agree that the conflict is not sufficient to result in disqualification, the individual may serve.

(*E*) *Objection procedure.* Even if the arbitrator does not have a financial conflict of interest, parties who nonetheless believe a potential for bias exists for any other reason may petition the Librarian under the objection procedure described in § 251.4. Parties will have available to them the employment history, affiliations, and the general nature of the clients represented by the potential arbitrators upon which to base their objections. The Librarian will rule on objections on a case-by-case basis.

(*F*) *Interests of relatives and associates.* Section 251.31(d) specifies that the financial interests of the arbitrator's spouse, minor child, and business associates are to be imputed to the arbitrator. This paragraph is derived directly from § 2635.402(b)(2) of the OGE's regulations.

(*iii*) *Financial disclosure statement.* Section 251.32 requires all listed arbitrators to file confidential financial disclosure statements with the Librarian, within one month following publication in the **Federal Register** of the annual list of arbitrators containing their names. To maintain the confidentiality of the statements, only the Librarian and designated Library staff will be permitted to review them. The Librarian will not select any arbitrator who has a conflict of interest as defined in § 251.31. When the two selected arbitrators pick their chairperson, they will have to consult first with the Librarian to see that the person they nominate has no conflict of interest. If the Librarian finds that a conflict does exist, the two selected arbitrators will be asked to choose another arbitrator who has no conflict of interest.

After the panel is selected, the arbitrators will have one week to file updated financial disclosure forms with the Librarian: This requirement is intended to ensure that no conflicts had developed between the time the arbitrators were listed and the time they were selected. If any conflicts arise during the later course of the proceeding, or if any change in an arbitrator's financial interests presenting a disqualifying conflict of interest is found during the hearing to have gone unreported, the Librarian will suspend the proceeding in accordance with § 251.8 of these interim regulations and replace the arbitrator with another arbitrator from the arbitrator list.

(*iv*) *Ex Parte communications.* Section 251.33 sets out the varying circumstances under which a ban is imposed on ex parte communications with: (1) The Librarian of Congress or the Register of Copyrights; (2) staff of the Library or the Copyright Office; (3) persons selected as arbitrators in a proceeding; and (4) persons named in the current list of qualified arbitrators. The section also describes what anyone receiving a prohibited communication must do, and the possible consequences of a violation of the rule.

(*A*) *Prohibited communications*—(aa) *Communications with librarian or register.* (1) Who is banned from communicating: Anyone outside the Library of Congress or Copyright Office;

(2) What communications are banned: The merits or status of any matter, procedural or substantive, relating to royalty distribution or rate adjustment;

(3) When communications are banned: Any time.

(4) Exceptions: Statements on public policies involved in CARP operations where the discussion is unrelated to specific proceedings; for example, a discussion on the advisability of amending the copyright statute.

(bb) *Communications with Library of Congress or Copyright Office staff.* (1) Who is banned from communicating: anyone outside the Library or the Office;

(2) What communications are banned: The substantive merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: Any time.

(4) Exceptions: procedural inquiries. If the employee does not know the answer, he or she will relay the question to the CARP and pass the answer back to the inquirer.

(cc) *Arbitrators selected by the librarian.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: Total ban on all communications for any reason.

(3) When communications are banned: A period beginning with the arbitrator's selection and ending with the filing of the CARP's report, and, if the matter is remanded, the period starting with the reconvening of the CARP, and ending with the filing of the final report.

(4) Exceptions: None

(dd) *Arbitrators listed as qualified in current list.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: The merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: The period when the individual's name appears on the Librarian's current list of qualified arbitrators;

(4) Exceptions: None.

(*B*) *Action required by recipients of banned communication.* Anyone who receives a prohibited communication is required immediately to end the communication and place on the public record of the proceeding the actual communication, if written or recorded,

or a description of the communication, if oral, together with a memorandum describing any further responses. The communication may not be considered by the CARP unless and until it is properly submitted into evidence by one of the parties.

(iii) Action taken by librarian or CARP. Either the Librarian or the CARP may require the party responsible for the prohibited communication to show cause why that party's interest in the proceeding should not be dismissed or otherwise adversely affected. This provision is derived from section 557 of the Administrative Procedure Act.

(v) Gifts and other things of monetary value. Section 351.34 deals with the ethical question of when, if ever, an arbitrator may accept gifts or other things of monetary value "from a person or organization having an interest that would be affected by the outcome of the proceeding," whether or not there was any intent to influence the outcome. The ban would be total for arbitrators actually selected for a CARP, and somewhat less stringent for individuals named as qualified on the Librarian's current list. The prohibition covers both direct and indirect solicitation and acceptance of gifts or things of value; it extends to gifts or other monetary benefits to the individual's family, or to a charity, if provided with the knowledge of or at the instance of the selected or listed arbitrator.

(A) Selected arbitrators. For arbitrators who have been selected to serve on a CARP, § 251.34 establishes a total ban on the solicitation or acceptance of any gifts or other monetary benefits, no matter how small in value. The prohibition would be in effect from the time of the arbitrator's selection through the submission of the CARP report, and during any court-ordered remand.

(B) Listed arbitrators. The ban also applies to arbitrators named on the Librarian's current list, but with two exceptions: (1) Acceptance of gifts or other things, including meals, where their value is less than $20 per occasion and less than $50 in a calendar year; and (2) acceptance of gifts or other things when the circumstances make it clear that the action was motivated purely by family and personal relationships. These two exceptions are derived from the OGE's regulations, and are intended to make plain that nominal, unsolicited benefits cannot be used to disqualify a potential arbitrator. They are not intended to encourage gift-giving under any circumstances, especially where, as here, arms-length relationships should be the rule rather than the exception.

(vi) Outside employment and other activities. Section 251.35 specifies that, once an arbitrator has been selected for a CARP and until all possibility of a court-ordered remand is ended, the arbitrator is required to refrain from any outside activity that would raise a question about the individual's ability to render an impartial decision. This ban extends beyond matters that could be considered a financial conflict of interest, and beyond receipt of gifts or other things of value. The following are examples of prohibited activities: giving free legal advice; attending a gathering sponsored by an interested party; giving a speech related to the proceedings; or accepting direct or indirect payment of honoraria. The ban on honoraria covers appearances, speeches, and articles that are related to the proceeding or, if the offer is from an interested party, that are related to any matter.

(vii) Pre-arbitration and post-arbitration employment restrictions. Section 251.36 provides that no arbitrator will be selected for a CARP if he or she had been employed within the previous five years by a party financially interested in the proceeding, although this rule may be waived under certain circumstances with the unanimous consent of the parties. The section also prohibits arbitrators from arranging future employment with any party to the proceeding, and from entering into employment with any party for three years after the date of the CARP report. "Employment" for these purposes is given its most expansive meaning to include any business relationship that involves the providing of personal services, but not including service as an arbitrator, mediator, or neutral. The five-year rule for pre-arbitration employment, and the three-year rule for post-arbitration employment, is based on the comments of the Copyright Owners. Copyright Owners, comment at 26–27. The definition of "employment" comes from § 2635.603(a) of the OGE's regulations. The exception for employment as an arbitrator, mediator, or neutral was adopted following our discussion with Endispute.

(viii) Use of nonpublic information. As noted earlier, it is our intention that CARP proceedings be conducted as openly as possible. In proceedings such as these, however, there will necessarily be information that must be kept confidential, and § 251.37 deals with these situations. Arbitrators are not to reveal any information from filings, pleadings, or evidence that the CARP has ruled to be confidential. Nor, unless required by law, are arbitrators to disclose any of the following: Intra-panel communications, or communications between the Library and the panel, intended to be confidential; draft rulings or decisions; and the final CARP report before it is submitted to the Librarian. Section 251.37(c) also prohibits an arbitrator from using nonpublic information for personal profit or for the profit of anyone else. This provision was derived from § 2635.703 of the OGE's regulations.

(ix) Billing and commitment to standards. In response to requests from the parties that these regulations seek to ensure that arbitrators' charges are reasonable, we have adopted the following provisions on billing:

(A) Bound by initial proposal. Arbitrators will be bound by the hourly or daily charge they proposed when their names were first submitted for listing by the Librarian. See § 251.3. They will not be allowed to charge in excess of those rates. We think this requirement will induce arbitrators to quote reasonable rates, since they know that their selection by the Librarian will be based in part on this factor.

In our discussions with Endispute a suggestion was made to allow arbitrators to charge a reasonable cancellation fee if a proceeding is settled early, to compensate them for having cleared their schedules. We have not adopted the proposal in these interim regulations, but we solicit comments on whether a cancellation fee is justifiable and, if so, how it might be worked into the overall CARP scheme for paying arbitrators.

(B) Incidental expenses. Arbitrators residing within the Washington, DC metropolitan area [11] will not be allowed to bill for incidental expenses such as local travel, meals, telephone calls, postage, and the like. All their incidental expenses will have to be absorbed entirely in the hourly or daily rate the arbitrator proposes. Arbitrators can, and doubtless will, take their incidental expenses into account when proposing their rate. In addition, as required by section 801(d) of the Copyright Code, the Library and the Copyright Office will provide the CARPs with necessary administrative services, and this will sharply reduce some of the arbitrators' incidental expenses. Arbitrators who reside outside the Washington, DC metropolitan area will be allowed to add their expenses for travel, lodging, and

[11] The Washington, DC metropolitan area is comprised of the District of Columbia, the independent cities of Alexandria, Fairfax, and Falls Church, the Virginia counties of Arlington, Fairfax, and Loudoun, and the Maryland counties of Montgomery and Prince Georges.

meals to their bills so long as these expenses do not exceed the applicable government rate.[12]

(C) Detailed accounting. Arbitrators are required to submit a detailed account of the work they performed during their billed time. This should give the parties a means of reviewing the reasonableness of the charges.

(D) No billing for support services. Except for support services provided by the Library of Congress and the Copyright Office, the arbitrators will be required and expected to perform their own work, including research, analysis of the record, and decision-writing. Although it might be argued that delegating some more routine work to others could lower the bill, this practice would undermine the full use of the arbitrators' experience and expertise, which were the reasons for their selection.

(E) Signed agreement. Finally, the Library will require all arbitrators to sign an agreement at the time of their selection, stating that they will abide by all of the standards of conduct and billing restrictions specified in this subpart. Failure to sign the agreement will preclude selection of the individual for a CARP.

(x) Sanctions and remedies. Section 251.39 specifies some of the sanctions and remedies for the violation of the standards of conduct provided by this subpart. The listings, which are not exhaustive, are divided into subsections laying out the sanctions and remedies applicable to: (1) Selected arbitrators; (2) listed arbitrators; and (3) interested parties who engaged in ethical violations. A final subsection, applicable to any and all violations of the standards of conduct under these regulations, authorizes the Librarian of Congress to refer the matter to the Department of Justice or other law enforcement authority for criminal prosecution. The following is a summary of § 251.39:

(A) Selected arbitrators. Sanctions and remedies applicable only against arbitrators selected to serve on a CARP: Removal from the proceeding;

(B) Selected and listed arbitrators. Sanctions and remedies applicable against both arbitrators selected to serve on a CARP and persons listed as qualified in the Librarian's current list:

(aa) Permanent removal of the person's name from the current and any future list of available arbitrators published by the Librarian;

(bb) Referral of the matter to the organized bar of which the person is a member for possible disciplinary action; and

(cc) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

(C) Interested parties or individuals. Sanctions and remedies applicable against interested parties or individuals who violate the ethical standards established by this regulation:

(aa) Referral of the matter to the organized bar or professional association of which the offending individual is a member for possible disciplinary action;

(bb) Barring the offending individual from current appearances before the CARP, from future appearances, or both;

(cc) Designation of an issue in the current or in a future proceeding, requiring the party to show cause why its interest should not be dismissed, denied, or otherwise adversely affected; and

(dd) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

On the question of referral of cases for criminal prosecution we note that, although arbitrators are not Federal Government employees, we are firmly of the opinion that U.S. criminal provisions do apply to attempts to influence them. Title 18 U.S.C. 201, which prohibits the influencing of public officials, defines public officials as

> * * * an officer or employee or *person acting for or on behalf of the United States, or any department, agency or branch of Government thereof,* including the District of Columbia, *in any official function, under or by authority of any such department, agency, or branch of Government,* or a juror. [emphasis supplied]

We believe that arbitrators are persons acting for or on behalf of the Library of Congress by the authority of the Librarian. Therefore, although we certainly hope the situation never arises, we will not hesitate to refer for criminal prosecution attempts to influence the arbitrators.

Questions may well be asked as to how the Library of Congress would go about removing a selected arbitrator from a proceeding under this subpart, and the legal basis for such an action. We believe that the appropriate procedure for the Librarian would involve suspension of the proceeding under § 251.8, issuance of an order declaring the arbitrator's seat vacant and the reasons for that action, and appointment of a replacement under § 251.6. The legal basis for the action would be the arbitrator's violation of these regulations, and the breach of his or her contract with the Librarian of Congress under which the individual was committed to observe these regulations. We invite comments on these conclusions, and on other possible sanctions and remedies for violations of these rules.

(xi) Appendix to this preamble: Examples of typical fact situations. In setting these standards of conduct, the Office is aware that the interests that could be affected by rate adjustment and royalty distribution proceedings are quite extensive. We therefore wish to make sure, especially in the area of financial conflicts of interest, that we have set the standard at an appropriate point. Should we cast the net wider in our efforts to anticipate bias, or, on the contrary, have we gone too far? As an appendix to this preamble, we have set out ten examples (with their related section numbers) of situations that seem likely to occur in the next few years. We solicit comments as to whether or not these situations should be grounds for eliminating an arbitrator from consideration by the Librarian to serve on a panel. Please note that these examples are intended solely to focus thought and elicit opinions; they are in no way intended to suggest our opinions on how they should be answered.

(e) *Subpart E—Procedures of Copyright Arbitration Royalty Panels*

(1) *Formal hearings—(i) Phase I and Phase II proceedings.* In cable royalty distribution proceedings, the former Tribunal traditionally divided the proceeding into two phases. In Phase I, the Tribunal determined the percentage allocation of the royalty pool among nine categories of claimants.[13] Then, if there were any disputes within a claimant category, the Tribunal would move to Phase II and make a suballocation. However, this procedure was "common law" at the Tribunal and was not embodied in § 251.41, which states only that formal hearings will be conducted for royalty distribution. It was not adopted, even as "common law," for satellite royalty distribution proceedings because the first three yearly funds were completely settled.

We solicit comments on the following:

Is the procedure of dividing a cable distribution proceeding into Phases I

[12] As of January 1, 1994, the government rate for the Washington, DC metropolitan area is lodging not to exceed $113 a day, and $36 for meals ($8 breakfast, $8 lunch, $20 dinner).

[13] The nine Phase I categories were: Program Suppliers, Sports, Commercial Television, Music, Noncommercial Educational Television, Devotional Claimants, Canadian Claimants, Noncommercial Educational Radio, and Commercial Radio. The claimant categories resulted mostly from the way the claimants themselves coalesced before the Tribunal, as they were entitled to do under section 111.

and II a precedent that is binding on the Copyright Office?

If not, should it nonetheless be followed?

If it should be followed, should we adopt rules governing the procedure?

Should those rules include a definition of each of the Phase I categories?

(ii) "Paper" proceedings. As proposed, § 251.41(b) of the NPRM permitted the parties to petition the Librarian to have their controversy decided solely on the submission of written pleadings. However, the section did not identify the basis on which the Librarian would rule in favor of the petition. The Music Publishers urged that the basis should be the same as that for summary judgment set forth in Rule 56 of the Federal Rules of Civil Procedure: "that there is no genuine issue as to any material fact." Music Publishers, comment at 9–10.

The Copyright Owners proposed a procedure called "summary decision," which would use the same standard: "no genuine issue for a hearing." They also proposed including a procedure for "motions to dismiss" for disposing of claims or petitions, which would be handled within the same framework. Motions for "summary decision" and "motion to dismiss" could be filed with the CARP panel or, if no panel had been constituted, with the Librarian. Copyright Owners, comment at 24.

The Office agrees with Music Publishers and Copyright Owners: the grounds for granting a petition for a "paper hearing" should be that no genuine issue exists as to any material fact. We have added a second ground supporting petitions for "paper hearings": if all parties to the proceeding agree to the petition.

As under the NPRM, petitions asking that a controversy be decided on the basis of written pleadings may be filed with the Librarian during the 30-day pre-hearing periods provided in §§ 251.45 and 251.63. If the Librarian finds that there is no factual issue requiring a formal hearing, or that all parties agree that the petition should be granted, he or she may decide in favor of "paper proceedings." Unlike the NPRM, however, § 252.41 now gives the Librarian alternative discretion to designate the request for a paper proceeding as an issue for the CARP. Similarly, the procedure for a motion to dismiss, to be found in § 251.45(b), is to file it with the Librarian who may, in his or her discretion, decide the motion to dismiss or designate it an issue for the panel.

(2) *Suspension or waiver of rules.* Section 251.42 provides that a CARP, for purposes of that panel's individual proceeding only, may waive the procedural provisions of the rules upon a showing of good cause. Copyright Owners have asked that any waiver of the procedural rules by the panel be allowed only if all the parties to the proceeding agree. Copyright Owners, comment at 23.

The Copyright Owners may be concerned that the discretion of the panel to waive rules could lead to a denial of due process, but the proposal to allow waivers only with the unanimous consent of the parties may go too far in the opposite direction. It might hinder a CARP's efforts to do justice in an individual instance, and it might give the party opposing the waiver unfair leverage. For example, the panel might want to waive the rules that allow only direct and rebuttal testimony, thus permitting surrebuttal testimony in the interest of getting more information. If unanimous consent were needed for the waiver, however, the party that might be disadvantaged by the additional information would have a veto.

The Office has decided to retain this provision as written, but we will closely monitor the circumstances under which future CARPs find good cause to suspend or waive the rules. Should any patterns of unfairness or denial of due process begin to emerge, we will revisit this provision.

(3) *Filing and service of written cases and pleadings—(i) Attestation of Written Testimony.* Section 251.44(d) requires that the written testimony of each witness be accompanied by an affidavit or declaration. Copyright Owners asked that this requirement be deleted and be made optional because witnesses testify orally under oath, and, in essence, swear twice. Copyright Owners, comment at 23. However, because some testimony is stipulated and is entered into the record without oral testimony, we have decided to retain the provision.

(ii) Typographical error. With regard to subsection (e)(1) of § 251.44, the Copyright Owners noted a typographical error: The word "not" was inadvertently left out when the subparagraph was carried over from the former Tribunal's rules. Copyright Owners, comment at 23. The correction has been made.

(iii) Service list. Subsection (f) requires the parties to a proceeding to serve everyone on the service list when making a filing with the CARP or the Librarian. The Copyright Owners asked that the section be amended to require the Librarian to develop a service list for each proceeding and distribute it to the parties so that they can comply with the requirements of service. The Copyright Owners also asked for the rule to specify that each party to a proceeding has an obligation to inform the Librarian of changes in its name or address affecting the service list. Copyright Owners, comment at 23. These are both good suggestions with which we agree, and we have amended the subsection accordingly.

(iv) Oppositions and replies. Copyright Owners requested that one or more new paragraphs be added to § 251.44 to provide for automatic pleading cycles whenever motions are filed in a proceeding. They recommended that oppositions to motions be filed within ten days and replies to oppositions be filed within five days of the date of service. Copyright Owners, comment at 23–24. The former Tribunal's rules did not contain provisions on these points, which we agree will be useful. Accordingly we have added a new subsection (g) to § 251.44.

(4) Precontroversy motions and discovery. Section 251.45, as proposed in the NPRM, provided a period for precontroversy exchange of documents and discovery, and the filing of precontroversy motions and objections. The resolution of these precontroversy actions would have been made by the Librarian.

(i) Comments of copyright owners. The Copyright Owners supported, in principle, the concept of a period of discovery to take place before the 180-day arbitration period, as a means of reducing hearing costs and focusing the issues to be decided. However, they argued that precontroversy discovery would be a "wasted effort" if it were to occur before the filing of the written direct cases, and that discovery requests should be focused on actual written cases rather than general information. They also urged that resolution of precontroversy matters should be made by the CARP, not by the Librarian, because the panel would ultimately be the body to determine the relevance of the proffered facts. Copyright Owners, comment at 6–9. To achieve what the Copyright Owners want—precontroversy discovery handled by the CARP and based on written direct cases—it would be necessary to have the written direct cases filed, and the CARP empaneled, before the beginning of the 180-day arbitration period.

To accomplish this goal in accordance with the provisions of the Copyright Code, the Copyright Owners recommended that a distinction be made between "the commencement of proceedings," 17 U.S.C. 803(d), and the "notice initiating an arbitration

proceeding," 17 U.S.C. 802 (b) and (e). Under this theory the Office would first declare the "commencement of proceedings" and thereupon require the filing of written direct cases and empanel the CARP; discovery motions and objections would be ruled on by the CARP. After discovery is complete the Office would then "initiate an arbitration proceeding," and at that point the 180-day arbitration period would begin to run. Copyright Owners, comment at 9–12.

(ii) Amendment of § 251.45. We agree with the Copyright Owners that precontroversy discovery before the filing of written direct cases would not be productive. At worst it could raise the costs of litigation and become a fishing expedition to harass an opposing claimant. However, as a matter of statutory construction, the Office cannot agree that the "commencement of proceedings" can be conceptually separated from "initiating an arbitration proceeding" so as to permit the CARP to sit earlier than the 180-day arbitration period. Section 802(b), which first uses the phrase "initiating an arbitration proceeding," employs it in the context of "a notice in the **Federal Register** initiating an arbitration proceeding under section 803 * * *" In § 803, the notice to which § 802(b) refers is the "notice of commencement of proceedings." Therefore, the phrases refer to each other and must be considered synonymous. Although, as noted in the NPRM, Chairman Hughes in his statement accompanying the CRT Reform Act recommended that our regulations provide for precontroversy discovery "to the extent practicable," we have come to the conclusion that there is no way to accomplish this goal under the statutory scheme.

We have therefore amended § 251.45 to eliminate the proposal for precontroversy discovery, and we have not adopted the Copyright Owners' recommendation to have discovery of written direct cases ruled on by the Panel before the 180-day period, because we do not believe that the statute allows for it.

(5) *Transcript and record.* We have reviewed § 251.49 on our own motion. The former Tribunal's rules required persons wishing a copy of the hearing transcript to purchase it from the official reporter, but we think the public should not only be able to inspect the transcript but also to make their own copies. We have therefore amended the section to provide that, during the proceeding, the public will have the opportunity to copy the transcript at a location specified by the CARP chairperson. After the proceeding, the transcript and the rest of the written record will be available at the Copyright Office for copying.

In addition, partly for reasons discussed above in connection with § 251.6, we solicit comments on whether the hearing sessions should be recorded on video as well as audio tape. Videotaping would add to the costs of the proceeding, but it would have several advantages: (1) Ensuring the accuracy of the official transcript, (2) allowing the arbitrators to reach a better decision by helping them to review the case more accurately, and (3) affording arbitrators who missed any portion of the proceeding, because of illness or because they were appointed after the proceeding had begun, an opportunity to make up for their absences.

(6) *Assessment of costs of arbitration panels.* Section 251.54 provides for the assessment of the costs of the Arbitration Panels.

(i) Comments on assessments in distribution proceedings. The Copyright Owners and RIAA/AARC have asked that the section be amended to provide that, in distribution proceedings, the costs of the CARPs be deducted from the relevant royalty fund. Copyright Owners, comment at 24. RIAA/AARC, comment at 4. The Office finds that it does not currently have authority to adopt this proposal. Section 802(h)(1) of the Copyright Code states: "The Librarian of Congress and the Register of Copyrights may * * * deduct from royalty fees * * * the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter." It does not provide that the Office can deduct the costs incurred by the CARP.

We agree that this is an unsatisfactory result. The Librarian of Congress, with input from the Copyright Office, is in the process of drafting "financial reform" legislation that would deal with this problem among other fiscal matters affecting the Library; we hope that the legislation will be introduced and enacted in the 103rd Congress. As currently drafted, title V of the proposed bill would add the following provision dealing with the point at issue here:

> In distribution proceedings, the Librarian of Congress and the Register of Copyrights may deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the copyright royalty panels, and pay the arbitrators from such deductions at such intervals and in such manner as the Librarian of Congress shall by regulation provide. Such deduction shall be made before the fees are distributed to any copyright claimants. Claimants shall bear the costs of the copyright arbitration royalty panels in direct proportion to their share in the distribution.

We invite further comments on this problem. Should the proposed legislation be enacted we would, of course, go forward with additional regulatory proceedings aimed at implementing it.

(ii) Comments and assessments in ratemaking proceedings. NCTAs expressed concern about the assessment of costs in a ratemaking proceeding. Section 251.54(a)(1) repeats the statutory language from § 802(c): "In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct." NCTA believes that it would be unfair for it to be assessed part of the costs of a rate adjustment proceeding it did not initiate; speculating that it could find itself defending an existing rate only because some other party petitioned to have it reconsidered. NCTA asked that the arbitrators be instructed to proceed on the presumption that the party seeking the rate adjustment should bear the costs of the proceeding. NCTA, comment at 3.

When the Tribunal was in existence, the costs of a rate adjustment proceeding were borne by the taxpayers, because the only authority the Tribunal had to assess its costs to the parties was for distribution proceedings. See, former 17 U.S.C. 807. Therefore, neither the petitioners nor the nonpetitioners paid any of the costs of a rate adjustment proceeding. With the adoption of the CRT Reform Act, Congress made a policy decision that taxpayers no longer would pay for the rate adjustment proceedings, and that the costs would be entirely borne by the parties. However, we cannot find any suggestion, nor is there any reason to believe, that Congress wanted to put the costs of the proceeding on the petitioner alone. On the contrary, Congress expressly stated that all the parties to a ratemaking proceeding shall pay, and left it to the panel to decide only the manner and proportion of their payments. The effect of putting the costs on the petitioner would be to make petitioners pay a high price for the periodic rate reviews that are already scheduled and contemplated by Congress.

NCTA's concern about a frivolous petitioner for rate adjustment may be justified. However, § 803 of the Copyright Code provides that only petitioners with a significant interest in the rate can initiate a rate adjustment proceeding. Therefore, frivolous petitions or petitions from noninterested persons will be dismissed. However, once a petitioner with a significant interest petitions, the rate review

becomes a matter of the public interest, because any member of the public may potentially pay, be a recipient of, or be affected by the rate. Therefore, since the burden should be shared by both the owners and users in an inquiry as to which rate would best serve the public interest, we cannot agree with NCTA's request.

(iii) Comments on billing cycle. Endispute expressed concern with the NPRM's proposal to have the arbitrators bill the parties only after the submission of the panel's report to the Librarian. In a 180-day proceeding, the arbitrators might have to wait seven to eight months before receiving any compensation. Endispute urged that the arbitrators be able to bill the parties monthly, but this would raise difficulties in a distribution proceeding. There, the parties, by law, are to pay the arbitrators in proportion to their share of the fund, but their share will not be known until the end of the proceeding.

Because of this problem we have not included a provision for monthly billing in this interim regulation. At the same time we are soliciting comments on the advisability of monthly billing and how it might be accomplished, given the statutory requirement that parties pay in proportion to their share of the fund. We are also interested in comments on the feasibility of alternatives to monthly billing, such as requiring the parties to make advance partial payments until a final bill can be prepared.

(4) Amendment of § 251.54. After reviewing the question of assessments, we have decided to modify the rule to take account of the possibility that, after the CARP has made its report, the Librarian may change the final distribution percentages or the percentages may be changed because of a court-ordered remand. As amended, the section requires the parties who have paid the arbitrators according to earlier percentages to reimburse each other to reflect the final percentages.

(f) *Subpart F—Rate Adjustment Proceedings*

(1) *Scope and commencement of adjustment proceedings.* In its comments EIA challenged the Office's characterization in §§ 251.60 and 251.61 of the authority to raise the DART royalty maximum as a "rate" adjustment proceeding. They argued that the charge—2% of the transfer price—cannot be changed by the Librarian, and that only the maximum of $8/$12 per device can. EIA, comment at 3–4. Whether the word "rate" encompasses only the applicable percentage, or whether it also includes the floors and ceilings on that percentage, does not have to be addressed here because, as noted above, the review of the DART royalty maximum by the Librarian is not a CARP proceeding. Therefore, the Office has deleted the references to it in §§ 251.60 and 251.61.

(2) *Period for consideration.* Section 251.63 provides a 30-day period before a rate adjustment proceeding to give the parties an opportunity to settle their differences.

(i) Comments of copyright owners. The Copyright Owners have asked that the first sentence be amended to clarify that the period is for consideration "of settlement." Copyright Owners, comment at 25. The Office concurs, but has further modified the phrase to read "consideration of their settlement." This is because it cannot be known officially who all the parties to a rate adjustment proceeding will be until the proceeding is initiated and everyone has had an opportunity to file notices of intent to participate. Therefore, pre-proceeding settlements can be reached only by those parties who make themselves known to each other, and the most that can be achieved is a settlement of their differences.

(ii) Comments of music publishers. The Music Publishers asked how a rate settlement reached during the period before convening of the CARP could be approved by the Librarian. Music Publishers, comment at 7–8. If there is a settlement among the known parties, no approval by the Librarian is necessary. Either it will result in a withdrawal of the rate petition, or it will become the jointly-held position of the parties to the settlement as to what the new rate should be. Once their jointly-held position becomes known, it cannot be considered a full settlement until the rate is proposed to the United States public, either in a notice-and-comment proceeding or in a CARP proceeding.[14]

(iii) Request for comments. The Office has made no changes in the interim rule. However, we are interested in comments concerning the 30-day settlement period in rate adjustment proceedings. We have two specific questions:

If a settlement is reached, would it be a useful alternative to the convening of a CARP for the Library/Office to propose the agreed-upon rate to the public in a notice-and-comment proceeding?

Does the Librarian have authority to adopt such a procedure, or would the convening of a CARP be required?

(3) *Assessment of costs.* Section 251.65 is based on § 802(h)(1) of the statute as amended by the CRT Reform Act, which allows the Librarian of Congress and the Copyright Office to assess their reasonable costs to the parties "to the most recent relevant arbitration proceeding." EIA commented that this assessment is only permitted, according to § 802(h)(1), "if no royalty pool exists from which their costs can be deducted." EIA, comment at 4. EIA's point is well-taken, and the Office has modified the section accordingly.

EIA requested further that the costs of the proceeding to raise the DART royalty maximum by the Librarian be assessed to the DART royalty pool. EIA, comment at 5. However, as noted above, this proceeding is not a CARP proceeding and is therefore not germane to this rulemaking.

(g) *Subpart G—Royalty Fee Distribution Proceedings*

The Copyright Office is adopting subpart G as proposed in the NPRM with one technical amendment. The reference to "cable television" in § 251.72(a) and § 251.73 is being changed to read "cable," as noted in the preamble discussion to § 251.2.

(h) *Part 252—Filing of Claims to Cable Royalty Fees*

Part 252 prescribes the filing requirements for claims to cable royalties. As noted in the NPRM, the procedural system for filing cable claims borrows heavily from the one adopted by the former Tribunal for the filing of digital audio claims. See 58 FR 53822 (1993).

(1) *Content of claims.* Section 252.3 prescribes the general requirements for the submission and content of cable royalty claims.

(i) Joint claimants. The CRT's requirements for filing DART claims included provisions dealing with joint claims. In setting out the required content of claims, subsection (a)(3) provides:

> If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements.

[14] The settlement that was reached in the 1987 mechanical license rate adjustment among Music Publishers, RIAA and the Songwriters Guild of America (SGA) was not approved as a final disposition of the rate adjustment by the Tribunal. It was proposed to the public in a notice-and-comment proceeding to see if the jointly-held position of these three organizations should become the basis of the Tribunal's rate adjustment. The comments agreed with Music Publishers/RIAA/SGA's proposal, and only then did the Tribunal adopt it. *1987 Adjustment of the Mechanical Royalty Rate*, 52 FR 22637 (1987).

Subsection (e), as adopted from the CRT's regulations and proposed in the NPRM, provided:

> All claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim.

(A) Comments of PBS. According to PBS, when it comes to joint claims it is unclear, under subsections (a)(3) and (e) of § 252.3, how to satisfy the requirement in subsection (a)(4) for identifying a secondary transmission that "establish[es] the basis for the claim." Would the requirement be satisfied by identifying at least one secondary transmission for at least one of the claimants included within a joint claim? Or is it necessary to identify at least one such transmission for each individual claimant included within the joint claim? PBS, comment at 2.

PBS argues that the former interpretation is the correct one, since the requirement in subsection (e) for filing a list identifying all joint claimants would not be necessary if each joint claimant had to identify a secondary transmission. Further support for this interpretation is drawn from the fact that § 252.3 is adopted from the filing requirements for DART, which clearly do not require each joint claimant to identify one or more of his or her songs that were the subject of a digital transmission. PBS, comment at 2–3.

PBS asks us to clarify this matter and amend § 251.3 so as not to require identification of a secondary transmission for each joint claimant. They note that they currently spend upwards of 300 hours a year on this requirement,[15] which they argue serves no substantive purpose beyond providing a jurisdictional basis for a party to participate.

(B) Amendment of § 252.3(e). We acknowledge that § 252.3 as proposed in the NPRM muddies the waters for the filing of cable royalty claims, and of satellite royalty claims as well. We are troubled, however, by changing what had been a longstanding requirement at the Tribunal for obliging all claimants to identify at least one secondary transmission of their copyrighted works. While such requirement does undoubtably add to the time and expense burdens of joint claimants such as PBS, it is not without purpose. The law states plainly that cable compulsory license royalties are only to be distributed to "copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). To support such a claim, each claimant may reasonably be asked to identify at least one secondary transmission of his or her work, thus permitting the Copyright Office to screen the claims and dismiss any claimants who are clearly not eligible for royalty fees. The requirement will also help to reduce time spent by a CARP determining which claimants have a valid claim: If only one secondary transmission is identified for one of the joint claimants, then it could not readily be determined if the other claimants were even eligible for cable royalties.

In an effort to end this confusion we are deleting subsection (e) with its requirement that joint claimants submit a list identifying all the claimants. Instead, we are amending subsection (a)(4) to require that each claimant to a joint claim, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, must identify at least one secondary transmission of his or her works.

(ii) Address and name change. Subsection (c) of § 253.3 provides that "[i]n the event that the legal name and/or address of the claimant changes after the filing of a claim, the claimant shall notify the Copyright Office of such change within 30 days of the change." Failure to provide this notification could, under certain circumstances, make the claim subject to dismissal. Copyright Owners request that subsection (c) be deleted in its entirety because "it could be an unnecessary draconian trap for the unwary (or wary) claimant." Copyright Owners, comment at 25.

It is not the intention of the Copyright Office that subsection (c) should be used to dismiss otherwise valid claims. The concern is that the Office must be able to communicate with the claimants, especially if an action requires prompt disposition. To take one example, suppose one party files a motion to dismiss another party's claim, and the Copyright Office asks the claimant to respond to the motion; the claimant has moved and there is no response. There would be no means to find out whether the first party's motion is valid in that situation. Subsection (c) is intended to give the Office authority to dismiss for failure to prosecute a claim in cases where the Office was not given timely notice of the change of address or name.

At the same time, we acknowledge the possibility that the 30-day deadline for notifying the Office of an address or name change could work hardships. We have therefore amended subsection (c) to provide that dismissal may only occur after the Office has made a good faith attempt to communicate with the claimant, and the effort failed because the claimant did not inform the Office of a change in legal name or address.

(2) Compliance with statutory dates. Section 252.4 implements the statutory requirement that cable claims must be made in the month of July for royalties from the preceding calendar year. Subsection (b) provides that a cable claim is timely filed if it is mailed with the U.S. Postal Service and bears a U.S. postmark during the month of July.

(i) Comments of copyright owners: Canadian and Mexican mailings. The Copyright Owners have asked that the provision for a July U.S. postmark be expanded to include mailings from Canadian and Mexican post offices. Copyright Owners, comment at 25. The Copyright Owners did not document their request, and the Office is uncertain about the authority or feasibility of acceding to it. We have therefore decided not to accept the Copyright Owners' proposed amendment at this time, but we invite them, and any other interested parties, to provide further information and comments on the question.

(ii) Amendments of § 252.4. After reviewing the timeliness requirement, we have decided to add a new subsection (b) to § 252.4, in recognition of § 703 of the Copyright Code.[16] The new subsection provides that, when the last day of July falls on a Saturday, Sunday, holiday, or other nonbusiness day in the District of Columbia or the Federal Government, the Copyright Office will accept claims received in the Office on the first business day in August, and will also accept claims bearing a U.S. postmark dated on the first August business day.

The Copyright Office is also amending § 252.4 by making a consequential change in subsection (c), and by adding new subsections (d) and (e). Subsection (d) provides that no claim may be filed by facsimile transmission. Under new subsection (e), parties whose claims were not timely received by the Office will be given an opportunity to offer proof of delivery. A claimant who sent

[15] It is clear that under § 302.7 of the former Tribunal's rules each joint claimant was required to identify at least one secondary transmission of its copyrighted works.

[16] Section 703 of the Copyright Code states, "In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired."

a claim which was properly addressed [17] and properly mailed, but which was nonetheless received late by the Copyright Office or was not received at all, may still be able to prove the validity of his or her filing. If the claim was sent by certified mail, return receipt requested, we will accept the claim if the claimant can produce the receipt showing that it was properly mailed. We will not accept as evidence either the affidavit of an officer or employee of the claimant, or the affidavit of a U.S. postal worker.

(3) Proof of fixation of works. Section 252.5 of our earlier interim regulation, which was imported from the CRT rules, provided a detailed procedure for proving fixation of a work for which a cable claim had been filed. The Copyright Owners have asked that the section be deleted in its entirety because it is no longer necessary. Copyright Owners, comment at 25. The Copyright Office agrees. If there are any future controversies involving whether a work was fixed in a tangible medium, they can be resolved under the general authority of the Library and the CARPs to issue dispositive determinations during the course of a proceeding.

(4) Copies of claims. In place of "Proof of fixation of works," the Copyright Office is adopting a new text in § 252.5. The new section provides that all claimants must submit an original and two copies of their claims to cable royalty fees.

(i) *Part 257—Filing of Claims to Satellite Carrier Royalty Fees*

Although none of the commentators requested any changes in part 257, the Copyright Office is making several amendments modeled after, and for the same reasons as, the changes made in part 252. Subsection 257.3(a)(4) is amended, and subsection (e) is deleted, to clarify that each claimant in a joint claim must identify at least one secondary transmission of his or her works. (See the discussion of filing of cable claims under § 252.3 above.) Subsection (c) is amended to allow the Copyright Office to dismiss a claim if it has made a good faith effort to contact a claimant, but has failed because the claimant has not informed the Office of a change in name or address. Section 251.4—Compliance with Statutory Dates—is amended by allowing claimants to file on the first business day in August whenever July 31 falls on a non-business day, adding a prohibition of submission of claims by facsimile transmission, and allowing claimants to offer proof of mailing for claims properly mailed but not received by the Copyright Office. Finally, § 251.5—Proof of Fixation of Works—is eliminated and replaced with a provision requiring claimants to submit an original and two copies of each claim to satellite carrier royalty fees.

(j) *Part 259—Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments*

Corresponding to our amendments to the rules for filing cable and satellite claims, we are making the same changes with regard to filing a DART claim. Section 259.3(c) removes the provision for requiring name and address changes to be filed within 30 days, and replaces it with a general obligation to report changes. Section 259.4 is amended by adding a new subsection (e) which prohibits the filing by facsimile transmission of the notice of appointment of an independent administrator. Section 259.5 is changed to allow claimants to file on the first business day in March whenever the last day in February falls on a Federal Government nonbusiness day, to prohibit the filing of claims by facsimile transmission, and to allow claimants who send their claims by certified mail, return receipt requested, to offer proof of mailing if the Copyright Office has not timely received the claim. A new section § 259.6, modeled after § 252.6 and § 257.5, is added to part 259 requiring the filing of an original and two copies of claims to DART royalties.

Appendix A to Subpart D—Standards of Conduct

Note: The following Appendix will not appear in the Code of Federal Regulations.

We use this Appendix to offer ten examples of hypothetical situations that are intended to probe the proper extent of the restrictions on financial interests. Many of them refer to Phase I or Phase II of the former Tribunal's cable proceedings. This is not intended to presume the actual structure of the CARP proceedings, but rather to improve the quality of the comments by providing concrete situations.

§ 251.31(a)(1)

Example 1: An arbitrator is being considered for a cable controversy among five Phase I categories. He has a financial interest in a claimant that is in one of the other Phase I categories which has settled its interest in the proceeding. Does he have a financial conflict of interest?

Example 2: An arbitrator is being considered for a Phase I cable controversy that includes the Commercial Television Station category. She has a financial interest in a commercial broadcast station. However, the station is not a claimant in the proceeding because it is not carried as a distant signal by any cable system. Does she have a financial conflict of interest?

Example 3: An arbitrator is being considered for a cable controversy in which there is a complete Phase I settlement, but there is one Phase II controversy. He has a financial interest in a claimant outside of the Phase II category that has the controversy. Does he have a financial conflict of interest?

Example 4: An arbitrator has a financial interest in a motion picture production company which does not file a claim for cable royalties. However, the distributor who syndicates the company's movies to television does file claims for royalties, and remits to the film producer a percentage of all his syndication revenues. Does the arbitrator have a financial conflict of interest?

§ 251.31(a)(2)

Example 5: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75% rate. She has a financial interest in a cable system that grosses less than $292,000 per half year. The 3.75% rate only applies to cable systems that gross more than $292,000 per half year. Does she have a financial conflict of interest?

Example 6: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75%. He has a financial interest in a cable network which negotiates carriage on cable systems in the private marketplace. Does he have a financial conflict of interest?

§ 251.31(b)

Example 7: An arbitrator is being considered for a satellite carrier distribution proceeding. He is an affiliate of a performing rights society, and receives, on average, $100 a year for a song he wrote 30 years ago. Does he have a financial conflict of interest?

§ 251.31(c)(1)

Example 8: An arbitrator is being considered for a mechanical rate adjustment hearing. He has a stock mutual fund which is currently invested in several recording companies. Does he have a financial conflict of interest?

§ 251.31(c)(2)

Example 9: An arbitrator is being considered for a Phase I cable distribution proceeding. From 1960 to 1970, she worked for a program syndicator. She is now receiving a fixed pension from the syndicator for her ten years' work. Does she have a financial conflict of interest?

§ 251.36(c)

Example 10: An arbitrator has presided over a cable rate adjustment proceeding which reviewed the 3.75% rate. The time for all appeals has passed, and no one has appealed. The arbitrator returns to private practice and a cable system wants to hire the arbitrator to be its attorney on matters before the FCC. During the proceeding, the cable industry was represented by NCTA and CATA. The cable system that wants to hire

[17] A claim addressed to the former Tribunal will not be considered properly addressed.

the arbitrator was not a party to the proceeding, nor did it authorize NCTA or CATA to represent it in the proceeding; however, the cable system was affected by the change in the 3.75% rate. Can the arbitrator take the cable system on as a client?

List of Subjects

37 CFR Parts 251 and 301

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Parts 252 and 302

Cable television, Claims, Copyright.

37 CFR Parts 253 and 304

Copyright, Music, Radio, Rates, Television.

37 CFR Parts 254 and 306

Copyright, Jukeboxes, Rates.

37 CFR Parts 255 and 307

Copyright, Music, Recordings.

37 CFR Parts 256 and 308

Cable television, Rates.

37 CFR Parts 257 and 309

Cable television, Claims.

37 CFR Parts 258 and 310

Copyright, Satellite.

37 CFR Parts 259 and 311

Claims, Copyright, Digital audio recording devices, and Media.

37 CFR Parts 303

Copyright, Jukeboxes.

37 CFR Parts 305

Claims, Jukeboxes.

Interim Rules

For the reasons set out in the preamble, 37 CFR chapters II and III are amended under authority of 17 U.S.C. 802(d) as follows:

1. Part 301 of chapter III is removed.

1a. Existing parts 201 through 211 are designated as subchapter A, and a new heading for subchapter A is added to read as follows: Subchapter A—Copyright Office and Procedures.

1b. New subchapter B—Copyright Arbitration Royalty Panel Rules and Procedures—is added to chapter II consisting of parts 251–259.

2. A new part 251 is added to subchapter B of chapter II to read as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Subpart A—Organization

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

Subpart C—Public Access to and Inspection of Records

Subpart D—Standards of Conduct

Subpart E—Procedures of Copyright Arbitration Royalty Panels

Subpart F—Rate Adjustment Proceedings

Subpart G—Royalty Fee Distribution Proceedings

Authority: 17 U.S.C. 801–803.

Subpart A—Organization

§ 251.1 Official address.

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning copyright royalty rates for the cable compulsory license, 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for making and distributing phonorecords, 17 U.S.C. 115.

(c) To make determinations concerning copyright royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license authorized by 17 U.S.C. 116 expires or is terminated and is not replaced by another such license agreement.

(d) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works, 17 U.S.C. 118.

(e) To distribute cable and satellite carrier royalty fees and digital audio recording devices and media payments under 17 U.S.C. 111, 119, and chapter 10, respectively, deposited with the Register of Copyrights.

§ 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit, on or before May 6, 1994, and before January 1 of each year thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration

Royalty Panel. The list shall contain the following for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After May 6, 1994, and after January 1 of each year thereafter, the Librarian of Congress shall publish in the **Federal Register** a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

§ 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 30-day period specified in § 251.63, file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 30-day time period specified in § 251.45(a), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

(a) Admitted to the practice of law in any state, territory, trust territory, or possession of the United States.

(b) Ten or more years of legal practice.

(c) Experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes.

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the **Federal Register** initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by § 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum. If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the **Federal Register** according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the **Federal Register**.

§ 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under § 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the

Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings are to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a recorded vote of the panel and included in the announcement.

§ 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to be present does not include the right to participate or make comments.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the **Federal Register** as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of § 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under § 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will

resubmit the question to the CARP to gain authorization for their disclosure.

§ 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C—Public Access to and Inspection of Records

§ 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the **Federal Register** in accordance with § 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in § 251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action.

§ 251.22 Public access.

(a) *Location of Records.* All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are $0.40 per page. Fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

§ 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of subchapter A of this chapter.

Subpart D—Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

(a) *Definitions.* For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A "selected arbitrator" is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP panel, in accordance with § 251.6 of these regulations;

(2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with § 251.3 of these regulations.

(b) *General principles applicable to arbitrators.* Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be

patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

§ 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest—

(1) in the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) in the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include—

(1) owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interest of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

(1) the arbitrator's spouse;

(2) the arbitrator's minor child;

(3) the arbitrator's general partner; or

(4) an organization or entity which the arbitrator serves as officer, director, trustee, general partner or employee.

§ 251.32 Financial disclosure statement.

(a) Each year, within one month of publication in the **Federal Register** of the list of available arbitrators, each listed arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.30.

(b) If any conflicts of interest do exist, the Librarian shall not choose that person for the proceeding for which he or she has the financial conflict, except—

(1) the listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve, or

(2) the listed arbitrator may disclose on the record the conflict of interest causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding. Any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP panel, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are any changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) during the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) if the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

§ 251.33. Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian.

(c) *Listed arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as a arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding: (i) all such written or recorded communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

§ 251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except—

(1) a listed arbitrator may accept unsolicited gifts having an aggregate market value of $20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed $50 in a calendar year, or

(2) a listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall—

(1) engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

§ 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner—

(1) intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) draft interlocutory rulings or draft decisions; or

(3) the CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

§ 251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under § 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress,

arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

§ 251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following—

(a) in the case of a selected arbitrator,

(1) removal of the arbitrator from the proceeding;

(2) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) referral of the matter to the bar of which the arbitrator is a member.

(b) in the case of a listed but not selected arbitrator—

(1) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) referral of the matter to the bar of which the listed arbitrator is a member.

(c) in the case of an interested party or individual who engaged in the ethical violation—

(1) referral of the matter to the bar or professional association of which the interested individual is a member;

(2) barring the offending individual from current and/or future appearances before the CARP;

(3) designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§ 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of Copyrights, except where expressly provided in the provisions of this subpart.

§ 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 30-day period specified in § 251.45(a) for filing motions in a distribution proceeding, or during the 30-day period described in § 251.63 for settling rate differences, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP panel decide the controversy or rate adjustment on the basis of written pleadings. The Librarian, upon recommendation of the Register of Copyrights, may rule on the petition or designate it as an issue to be ruled upon by the CARP. The petition may be granted if—

(1) there is no genuine issue as to any material fact, or

(2) all parties to the controversy agree with the petition.

§ 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

§ 251.43 Written cases.

(a) The proceedings of a Copyright Arbitration Royalty Panel for rate adjustment or royalty fee distribution shall begin with the filing of written direct cases of the parties who have filed a notice of intent to participate in the hearing.

(b) The written direct case shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

§ 251.44 Filing and service of written cases and pleadings.

(a) *Copies filed with a Copyright Arbitration Royalty Panel.* In all filings with a Copyright Arbitration Royalty Panel, the submitting party shall deliver, in such a fashion as the panel shall direct, an original and three copies to the panel. The submitting party shall also deliver one copy to the Copyright Office at the address listed in § 251.1. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, a CARP may reduce the number of copies required by the panel, but a complete copy must still be submitted to the Copyright Office. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Copies filed with the Librarian of Congress.* In all pleadings filed with the Librarian of Congress, the submitting party shall deliver an original and five copies to the Copyright Office. In no case shall a party tender any pleading by facsimile transmission.

(c) *English language translations.* In all filings with a CARP or the Librarian

of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support it, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings with a CARP or the Librarian of Congress, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the CARP panel or the Copyright Office. If a party files a pleading that requests or would require action by the panel or the Librarian within 10 or fewer days after the filing, it must serve the pleading upon all other counsel or parties by means no slower than overnight express mail on the same day the pleading is filed. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such notification on all parties and the CARP panel.

(g) *Oppositions and replies.* Except as otherwise provided in these rules or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within ten business days of the date of service of the motion, and replies to oppositions shall be filed within five business days of the date of service of the opposition. The date of service shall be deemed to be the third business day following service by mail or the next business day following service by overnight delivery, by hand, or by telefacsimile.

§ 251.45 Precontroversy motions, and discovery.

(a) *Precontroversy motions and objections.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, in the notice asking the claimants whether any controversies exist concerning distribution of the royalty funds, designate a 30-day period in which any party to the proceeding may file with the Librarian of Congress objections to, or motions to dismiss, any party's royalty claim, or motions for declaratory rulings, or for procedural or evidentiary rulings, on any proper ground. In the case of a rate adjustment proceeding, the 30-day period shall correspond with the 30-day period specified in § 251.63 for settling rate differences.

(b) Any party to the proceeding wishing to file a response to such motion or objection may do so within two weeks. The Librarian, upon recommendation of the Register of Copyrights, shall rule on the motion or objection prior to the initiation of an arbitration proceeding, or may designate the motion or objection as an issue for the panel to rule on.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of the written direct and rebuttal cases in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of the written cases, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

§ 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

6I11(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP panel's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP panel, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may

present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP panel expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the CARP panel. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP panel shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the CARP panel and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(l) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP panel desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, That no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

§ 251.51 Closing the hearing.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon ten days' notice to all parties.

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues specifically affecting that person.

§ 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law specified in § 251.52, and not later than 180 days from publication in the **Federal Register** of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

§ 251.54 Assessment of costs of arbitration panels.

(a) After the submission of the panel's report to the Librarian of Congress, the panel may assess its ordinary and necessary costs, according to § 251.38, to the participants to the proceeding as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a royalty distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution.

(3) In the case of a change in the share of distribution because of the Librarian's substitution of a new determination, or a determination reached as a result of a court-ordered remand, the parties shall make restitution to each other for the difference in payments that resulted from the change.

(b) The chairperson of the panel shall cause to be delivered to each participating party a statement of the total costs of the proceeding, the party's share of the total cost, and the amount owed by the party to each arbitrator.

(c) All parties to a proceeding shall have 30 days from receipt of the statement of costs and bill for payment in which to tender payment to the arbitrators. Payment should be in the form of a money order, check, or bank draft. Failure to submit timely payment may submit the nonpaying party to the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies.

§ 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see § 251.55, but within 60 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the **Federal Register**.

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the **Federal Register**, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the **Federal Register**.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees specified by those sections.

Subpart F—Rate Adjustment Proceedings

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and noncommercial educational broadcasting (17 U.S.C. 118). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, phonorecords, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Phonorecords: During 1997 and each subsequent tenth calendar year.

(3) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the **Federal Register** on June 30, 1997, and at five year intervals thereafter.

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable television, phonorecords, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which the petition for a rate adjustment is based.

§ 251.63 Period for consideration.

To allow time for parties to settle their differences regarding rate adjustments, the Librarian of Congress shall, after the filing of a petition, or prior to the commencement of proceedings made under 17 U.S.C. 118(b), designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the consideration period to be published in the **Federal Register**, and such notice shall include the effective dates of that period.

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

At the end of the 30-day period for settling rate differences, and after the Librarian has ruled on all motions filed during that period under § 251.45(b), the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the **Federal Register** a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting in accordance with 17 U.S.C. 118. Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

§ 251.65 Deduction of costs of rate adjustment proceedings.

The Librarian of Congress and the Register of Copyrights may deduct the reasonable costs the Library of Congress and the Copyright Office incurred as a result of a rate adjustment proceeding from the relevant royalty pool. If no royalty pool exists, the Librarian of Congress and the Register of Copyrights may assess their reasonable costs directly to the parties participating in the most recent relevant proceedings.

Subpart G—Royalty Fee Distribution Proceedings

§ 251.70 Scope.

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they

are inconsistent with the specific provisions of this subpart.

§ 251.71 Commencement of proceedings.

(a) *Cable.* In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers.* In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§ 251.72 Determination of controversy.

(a) *Cable.* After the first day of August each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of cable compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(b) *Satellite carriers.* After the first day of August of each year, the Librarian shall determine whether a controversy exists among the claimants of the satellite carrier compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

(c) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the **Federal Register**, along with a description of the general structure and schedule of the proceeding.

§ 251.73 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

§ 251.74 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

3. Part 302 of chapter III is removed.

3a. A new part 252 is added to subchapter B of chapter II to read as follows:

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.
252.1 Scope.
252.2 Time of filing.
252.3 Content of claims.
252.4 Compliance with statutory dates.
252.5 Copies of claims.

Authority: 17 U.S.C. 111(d)(4), 801, 803.

§ 252.1 Scope.

This part prescribes procedures under to 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a cable system of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, a claimant chooses to negotiate a joint claim, either the particular joint claimant or the individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

PART 303—[REMOVED]

4. Part 303—Access to Phonorecord Players (Jukeboxes) of chapter III is removed.

PART 304—[REDESIGNATED AS PART 253]

5. Part 304 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 253.

6. The heading for part 253 is revised to read as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

7. The authority citation to part 253 is revised to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.4 [Amended]

8. Section 253.4 is amended in the introductory text of the section by removing "§§ 304.5 and 304.6" and adding "§§ 253.5 and 253.6".

§ 253.8 [Amended]

9. Section 253.8(e) is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.9 [Amended]

10. Section 253.9 is amended by removing "CRT" and adding "Copyright Office".

§ 253.10 [Amended]

11. Section 253.10 is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.10b [Amended]

11a. Section 253.10(b) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.10c [Amended]

11b. Section 253.10(c) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.12 [Amended]

12. Section 253.12 "Amendment of certain regulations" and 253.13 "Issuance of interpretative regulations" are removed.

PART 305—[REMOVED]

13. Part 305 Claims to Phonorecord Player (Jukebox) Royalty Fees of chapter III is removed.

PART 306—[REDESIGNATED AS PART 254]

14. Part 306 is transferred to chapter II, subchapter B and is redesignated as part 254.

15. The heading for part 254 is revised to read as follows:

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

16. The authority citation for part 254 is revised to read as follows:

Authority: 17 U.S.C. 116, 801(b)(1).

§ 254.1 [Amended]

17. Section 254.1 is amended by removing "306" and adding "254" and by removing "and 804(a)".

PART 307—[REDESIGNATED AS PART 255]

18. Part 307 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 255.

19. The heading for part 255 is revised to read as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

20. The authority citation for part 255 is revised to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.1 [Amended]

21. Section 255.1 is amended by removing "307" and adding "255".

§ 255.2 [Amended]

22. Section 255.2 is amended by removing "§ 307.3" and adding "§ 255.3".

§ 255.3 [Amended]

23. Section 255.3 is amended in paragraph (g)(1) by removing "Copyright Royalty Tribunal" and in (g)(1) and (g)(2) by removing "CRT" each place it appears and adding "Librarian of Congress" in each place, respectively.

PART 308—[REDESIGNATED AS PART 256]

24. Part 308 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 256.

25. The heading for part 256 is revised to read as follows:

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

PART 309—[REDESIGNATED AS PART 257]

26. Part 309 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 257.

27. Part 257 is revised to read as follows:

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

Sec.

Authority: 17 U.S.C. 119(b)(4).

§ 257.1 General.

This part prescribes the procedures under 17 U.S.C. 119(b)(4) whereby

parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

§ 257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 257.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to satellite carrier compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a satellite carrier of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, an interested copyright party chooses to negotiate a joint claim, either the particular joint claimants or individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 257.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to satellite carrier royalty fees.

§ 257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

PART 310–[REDESIGNATED AS PART 258]

28. Part 310 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 258.

29. The heading for part 258 is revised to read as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

29a. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 119(c)(3)(F).

§ 258.1 [Amended]

30. Section 258.1 is amended by removing "310" and adding "258".

§ 258.2 [Amended]

31. Section 258.2 is amended by removing "§ 310(3)(b)" and adding "§ 258(3)(b)".

PART 311—REDESIGNATED AS PART 259]

32. Part 311 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 259.

33. The heading for part 259 is revised to read as follows:

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

33a. The authority citation for part 259 is amended to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.1 [Amended]

34. Section 259.1 is amended by removing "Copyright Royalty Tribunal" and adding "Copyright Office".

§ 259.2 [Amended]

35. Section 259.2 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.3 [Amended]

36. Section 259.3 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

36a. Section 259.3 is amended by revising paragraph (c) to read as follows:

§ 259.3 Content of claims.

* * * * *

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant

are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

* * * * *

§ 259.4 [Amended]

37. Section 259.4 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

37a. A new paragraph (e) is added to § 259.4 to read as follows:

§ 259.4 Content of notices regarding independent administrators.

* * * * *

(e) No notice may be filed by facsimile transmission.

§ 259.5 [Amended]

38. Section 259.5 is revised to read as follows:

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during normal business hours during the months of January or February, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which the last day of February falls on Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after the last day of February, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a postal worker will be accepted as proof in lieu of the receipt.

39. Section 259.6 is revised to read as follows:

§ 259.6 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to digital audio recording devices and media royalty payments.

CHAPTER III—[REMOVED]

41. Chapter III is removed.

Dated: May 3, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–10985 Filed 5–6–94; 8:45 am]

BILLING CODE 1410–09–P

federal register

Monday
May 9, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 527

Transfer of Inmates After Conviction; Rescission; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

[BOP–1023–F]

Transfer of Inmates After Conviction; Rescission

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction because the provisions contained in these regulations are sufficiently expressed in pertinent Federal Rules and consequently do not need to be restated as regulations.

EFFECTIVE DATE: May 9, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction (28 CFR 527.20). A final rule on this subject was published in the **Federal Register** April 4, 1980 (45 FR 23365).

In accordance with E.O. 12866, the Bureau of Prisons is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that provisions for transfer of inmates after conviction pertinent to Rule 38 of the Federal Rules of Criminal Procedure (more specifically, paragraph (b) with respect to inmates convicted of offenses committed on or after November 1, 1987, and paragraph (a)(2) for inmates convicted of offenses committed prior to November 1, 1987) are sufficiently expressed in the pertinent statute and that consequently there is no need to restate these provisions in Bureau regulations.

Section 527.20 had stated that the Bureau of Prisons adhered to Rule 38(a)(2) of the Federal Rules of Criminal Procedure. This Rule provides, in part, that if a sentence of imprisonment is not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where the appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals. Section 527.20 further stated that the Bureau shall make every effort to place the inmate in such a facility, unless a reason exists for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt is made to arrive at an acceptable place of confinement.

The Bureau has explicit statutory authority and delegated authority to designate the place of a prisoner's confinement (see 18 U.S.C. 3621, 4082 (applicable to offenses committed prior to November 1, 1987), and 28 CFR 0.96(c)). Internal agency procedures provide sufficient guidance in consideration of court recommendations for the place of confinement made under either Rule 38(a)(2) or (b).

Because this rescission imposes no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 4201–4218, 5003, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart C—[Removed and Reserved]

2. Subpart C, consisting of § 527.20, is removed and reserved.

[FR Doc. 94–11101 Filed 5–6–94; 8:45 am]

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