

§ 251.41

37 CFR Ch. II (7–1–10 Edition)

§ 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 45-day period specified in § 251.45(b)(1)(i) for distribution proceedings, or during the 45-day period specified in § 251.45(b)(2)(i) for rate adjustment proceedings, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP decide the controversy or rate adjustment on the basis of written pleadings. The petition may be granted if—

(1) The controversy or rate adjustment, as appropriate, does not involve any genuine issue of material fact; or

(2) All parties to the proceeding agree, in writing, that a grant of the petition is appropriate.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994]

§ 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) All parties who have filed a notice of intent to participate in the hearing shall file written direct cases with the Copyright Office, and with other par-

ties in the manner in which the Librarian of Congress shall direct in accordance with § 251.45(b).

(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 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.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63717, Dec. 2, 1996; 63 FR 30635, June 5, 1998]

§ 251.44 Filing and service of written cases and pleadings.

(a) *Filing of pleadings.* In a royalty fee distribution proceeding or in a rate adjustment proceeding, the submitting party shall deliver an original and five copies of all filings to the Copyright Office at the address listed in § 251.1, unless otherwise instructed by the Librarian of Congress or the CARP. The Copyright Office will make further distribution to the CARP, as necessary. In