

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with request for comments in the **Federal Register** on March 23, 1999 (64 FR 13882). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on June 16, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on May 4, 1999.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 251

[Docket No. RM 99-1 CARP]

#### Payment of Arbitrators; Distribution Proceedings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office is announcing final regulations that prescribe how the arbitrators who serve on a copyright arbitration royalty panel shall be reimbursed for their services.

**DATES:** Effective June 10, 1999.

#### FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** Copyright arbitration royalty panels (CARPs) are *ad hoc* panels administered by the Librarian of Congress and the Copyright Office. The CARPs adjust the rates and distribute the royalty fees collected under the various compulsory licenses and statutory obligations of the Copyright Act.

Three arbitrators serve on each panel. Upon the recommendation of the

Register of Copyrights, the Librarian of Congress selects two of the arbitrators, who in turn choose a third person to serve as the chairperson. Prior to the passage in 1997 of the Technical Corrections to the Satellite Home Viewer Act of 1994, Public Law 105-80, 111 Stat. 1529, the Librarian of Congress had no express authority to pay the arbitrators for their services, even in those instances when the Library held the royalty fees that were the subject of a distribution proceeding. Consequently, the responsibility for paying the arbitrators fell to the parties participating in the proceeding.

This changed with the passage of the technical amendments act which, *inter alia*, revised section 801(d). Section 801(d) now reads, in relevant part, as follows:

The Librarian of Congress, upon the recommendation of the Register of Copyrights, . . . shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. . . . Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).

17 U.S.C. 801(d). The change allows the Librarian of Congress to use the royalty fees that have been collected under title 17 to pay the arbitrators who determine the distribution of these same royalty fees. Payments to these arbitrators are identified as reasonable costs of the Library and shall be made in accordance with the regulations promulgated by the Librarian of Congress.

The final regulations announced herein amend 37 CFR 251.54 to specify how often and in what manner the arbitrators shall receive payment for their service on a CARP. In accordance with the administrative processes associated with making payments for services contracted for outside the Library of Congress, payment shall be made within 30 days of the receipt of a proper statement of cost. In the case of a distribution proceeding, each arbitrator shall receive payment directly from the Library of Congress. In the case of a rate adjustment proceeding, each arbitrator shall receive payment directly from the parties participating in the proceeding.

The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for notice and comment, and a delay in the effective date, do not apply to the proposed amendments to § 251.54, of title 37 of the CFR, because the regulations pertain to agency management of a contractual obligation. No other law requires that a notice of

proposed rulemaking and an opportunity for public comment be given for these amendments.

Accordingly, the Copyright Office is adopting the amendments as final regulations upon publication in the **Federal Register**.

#### List of Subjects in 37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set out in the preamble, chapter II of title 37 of the Code of Federal Regulations is to be amended as follows:

#### PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

**Authority:** 17 U.S.C. 801-803.

2. Revise § 251.54 to read as follows:

##### § 251.54 Assessment of costs of arbitration panels.

(a) The ordinary and necessary costs of an arbitrator shall be assessed, in accordance with § 251.38, 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 distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence

Avenue, SE, Washington, DC 20540-9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators directly from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

Dated: April 28, 1999.

**Marybeth Peters,**  
*Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

RIN 2900-AF22

#### Schedule for Rating Disabilities; Diseases of the Ear and Other Sense Organs

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the ear and other sense organs. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects

medical advances that have occurred since the last review.

**DATES:** Effective Dates: This amendment is effective June 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Carol McBride, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273-7230.

**SUPPLEMENTARY INFORMATION:** As part of its review of the Schedule for Rating Disabilities, VA published a proposal to amend that portion of the Schedule pertaining to the ear and other sense organs in the **Federal Register** of April 12, 1994 (59 FR 17295-17301).

Interested persons were invited to submit written comments on or before June 13, 1994. We received comments from the Veterans of Foreign Wars, Disabled American Veterans, and three individuals.

The evaluation of hearing impairment in the previous rating schedule was based on two criteria: the results of a puretone audiometry test and the results of a controlled speech discrimination test. Based on the results of these tests, one of two tables was used to determine a Roman numeral designation for hearing impairment: Table VI, where the number is determined by combining the percent of speech discrimination with the average puretone decibel (dB) loss, and Table VIa, which is based solely on average puretone dB loss, and was used only if language difficulties or inconsistent speech audiometric scores made use of Table VI inappropriate. The Roman numeral designations determined for each ear using Table VI or VIa were then combined using Table VII, in order to determine the percentage evaluation for hearing impairment. We proposed no change in this method of evaluation and included information about it in § 4.85, "Evaluation of hearing impairment" and § 4.86, "Auditory acuity, hearing aids, and evidence other than puretone audiometry and controlled speech." In response to several comments we received about the method of evaluation, and requesting more specific details, we have reorganized §§ 4.85 and 4.86 for the sake of clarity, as explained in detail below.

One commenter stated that nowhere is VA's authority to use the specific hearing tests it uses spelled out in the regulations. We agree that the tests required were not specified in the rating schedule and have therefore stated in § 4.85(a) that the Maryland CNC speech discrimination test and the puretone audiometry test are to be used for evaluating hearing impairment. The use

of the Maryland CNC speech discrimination test and the puretone threshold average determined by an audiometry test was established by a regulation on the evaluation of hearing loss published in the **Federal Register** on November 18, 1987 (52 FR 44117). That regulation changed the method of evaluating hearing loss based on a VA study on hearing loss testing methods and assistive hearing devices that had been requested by Congress in 1984. The results of the study were published in a VA report titled "Report on Hearing Loss Study" that was issued on January 6, 1986. Although the regulation revised the rating schedule to incorporate rating tables based on the new method of evaluation, it did not add to the schedule specific details about the new testing methods.

One commenter stated that if only VA examinations or authorized audiological clinic examinations are to be used, this should be stated in the proposed regulation. Based on this comment, we have stated in § 4.85(a) that an examination for hearing impairment for VA purposes must be conducted by a state-licensed audiologist. This will help to assure that examinations of veterans will be accurate and consistent because state licensing agencies require that audiologists meet specific educational and training requirements and pass a national competency examination.

Two commenters noted that the meaning of average puretone decibel loss is not explained in the rating schedule. We agree that this information should be included in the rating schedule and have added an explanation in § 4.85(d). For VA purposes, the average puretone decibel loss means a four-frequency puretone threshold average obtained by adding the puretone thresholds at four specified frequencies' 1000, 2000, 3000, and 4000 Hertz and dividing by four. This method and the reasons for its selection were explained in the 1987 regulation referred to above. Current terminology is "puretone threshold average" rather than "average puretone decibel loss," and we have used this language in § 4.85 and have revised the labels in Tables VI and VIa. For clarity, we have also titled Table VIa, untitled in the proposed rule, "Numeric Designation of Hearing Impairment Based Only on Puretone Threshold Average" and retitled Table VI, titled "Numeric Designation of Hearing Impairment" in the proposed rule, "Numeric Designation of Hearing Impairment Based on Puretone Threshold Average and Speech Discrimination." In the proposed rule we inadvertently placed