otherwise requested by a party and the request is approved.

[45 FR 29764, May 5, 1980, as amended at 57 FR 56441, Nov. 30, 1992]

§ 1024.4 Rules of procedure.

The following rules of procedure shall govern all financial assistance disputes appealed to the Board in accordance with this subpart:

RULE

1. Filing of an appeal; acknowledgment.
2. Selection of an appeal method.
3. Development of the record.
4. Objections to evidence submitted.
5. Alternative methods of appeal.
6. Parties to the appeal.
7. Representation before the Board.
8. Dismissal for failure to meet deadlines and other requirements.
9. The Board's powers, functions, and responsibilities.
10. *Ex parte* communications (communications outside the record).
11. Notice and location of hearings.
12. Calculation of time periods.

RULE 1. FILING OF AN APPEAL; ACKNOWLEDGMENT

(a) A brief written notice of appeal, along with a copy of the final agency decision being appealed shall be submitted within 60 days after receipt of the decision. The notice must indicate that an appeal is intended, and must clearly state the issues in controversy, and the relief requested. This notice, if sufficiently detailed, may serve as the appellant's initial complaint. See Rule 3(a).

(b) The appeal notice shall be mailed or delivered to the financial Assistance Appeals Board (for address see §1024.3(b)(1)), with a copy to the official whose decision is being appealed, and a second copy to the General Counsel, Department of Energy, Washington DC 20585.

(c) upon receiving the appeal notice, the Board will promptly acknowledge receipt of the notice of appeal and will notify the parties of the date docketed.

RULE 2. SELECTION OF AN APPEAL METHOD

Unless submitted earlier, within 20 days after the appellant receives the Board's notice of docketing, the appellant must submit to the Board, with copy to respondent, a letter electing one of the three methods available for processing the appeal. For disputes involving less than $10,000, method ''1'' (as set forth in Rule 5(a)) will automatically apply unless appellant specifically petitions and is granted the right to proceed under one of the other two methods. In exceptional circumstances, the respondent may likewise request the use of one of the other two methods. This election letter must identify the attorney or other person who will repesent the appellant, if the notice of appeal did not already do so. (See Rule 7(a)). In case the parties disagree as to the appeal method to be used, the Board will finally decide.

RULE 3. DEVELOPMENT OF THE RECORD

(a) Appellant; complaint. (1) Within 30 days after receiving the docketing notice from the Board, the appellant shall:

(i) Submit a complaint, or

(ii) Submit a specific request (for approval by the Board), that the final decision as issued by the financial assistance officer or contracting officer, together with the notice of appeal, adequately describe the matter in dispute and will serve as the complaint.

(2) The complaint shall include: A copy of the decision appealed from; relevant portions of the applicable assistance agreements; a statement of the amount, if any, in dispute; and, if the appellant is proceeding under method 1 or 2, a copy of any documents supporting its claim. The documents must be organized chronologically and accompanied by an indexed list identifying each document by date, originator and addressee.

(3) To reduce the burden on the appellant, the appellant may specify, in an appropriate index, those relevant documents already in the possession of the respondent which the respondent will then add to those documents submitted in its answer.

(b) *Respondent; answer*. (1) Respondent shall submit an answer within 30 days after receipt of a complaint, or after receipt of a notice from the Board that the decision and notice of appeal shall serve as the complaint. The Board may enter a general denial on behalf of the respondent upon its failure to submit an answer within the time limitation.

(2) In its answer the respondent shall submit to the Board, with copy to appellant, two copies of any documents, other than those submitted by appellant in its complaint—which the respondent considers to be material. These should be organized and indexed as required under paragraph (a) of this rule and shall include those documents already in the possession of the Department and identified and requested by the appellant in accordance with paragraph (a) of this rule.

(c) The Board, on its own initiative, or in response to an appropriate request from a party to the dispute, may order a party to submit additional material wherever the Board considers it useful in resolving the dispute.

RULE 4. OBJECTIONS TO EVIDENCE SUBMITTED

(a) Any objection to a document or other evidence submitted in the complaint or answer shall be raised as early as possible. The

parties shall attempt to resolve such objections informally between themselves before asking the Board to intercede.

(b) For those appeals that are to be resolved on the basis of a written record under method 1, either party may object to inclusion of materials or documents at any point prior to conclusion of the briefing schedule.

(c) For those appeals that are submitted for resolution using method 2, either party may object to inclusion of materials or documents at any time prior to the conclusion of the hearing.

(d) For those appeals processed under method 3, any materials or documents submitted shall not be included in the record upon which the Board's decision will be based unless they are specifically offered and admitted into evidence.

(e) The Board will use the Federal Rules of Evidence as a guide in determining admissibility of evidence but may exercise its sound discretion where appropriate.

RULE 5. ALTERNATIVE METHODS OF APPEAL

(a) Method 1. Proceeding on the written record. (1) Within 20 days after the appellant receives the respondent's answer, the appellant may submit to the Board (with a copy to respondent) a brief or statement containing the appellant's argument in support of its claim. Within 20 days after receipt of the appellant's brief or statement, the respondent may submit to the Board (with a copy to the appellant) a brief or statement containing the agency's response. Appellant may submit a further reply, but must do so within 10 days after appellant's receipt of respondent's submission.

(2) *Accelerating the procedure.* The appellant may choose one or more of the following mechanisms to speed the process.

(i) The appellant may choose to submit a single brief or statement with, or as part of, its election letter, and may consolidate the election letter with its notice of appeal.

(ii) Where the appeal involves an amount in dispute of less that $10,000, the appellant may, upon specific request, have the Board issue a brief final order affirming or reversing the agency financial assistance officer or contracting officer decision, without a written decision.

(3) *Inadequate record.* (i) If the Board decides that the written record presented is inadequate, the Board may present written questions to the parties; require further briefing on specified issues; require that oral testimony be presented; or take any other action that it considers necessary to develop a record upon which to base a sound decision.

(ii) One or both parties may sometimes believe that an issue on appeal requires more development than has been achieved on the written record. Therefore, on request of either or both parties, and if the Board agrees that it is appropriate to further develop the record, the Board may require the use of further appropriate procedures as applicable to hearings conducted pursuant to paragraphs (b) or (c) of this rule.

(4) *Record for decision.* The record upon which the decision will be based will consist of the complaint and answer (after disposition of all objections), the briefs or statements of the parties, and any other documents or material specifically allowed by the Board. A decision will be issued as soon as practicable (whenever possible within 30 days) after all submissions are filed or after the time for filing has expired.

(b) *Method 2: Conference hearing*—(1) *Witness statement.* Within 20 days after the filing and receipt of respondent's answer, each party shall submit a witness statement to the Board, with a copy to the other party. The witness statement must contain a list of anticipated witnesses, with a brief summary of the expected testimony of each, and a description of the testimony's relevance to the specific issues and to the matter in dispute. The statement may also contain a list of questions which the presiding Board member may ask of the other party's witness, or an identification of issue areas in which inquiry by the presiding Board member would be appropriate. The Board may on its own initiative reject unduly repetitious, lengthy or otherwise burdensome questions, and may order a party to include additional witnesses, or to exclude multiple witnesses who would testify on the same matter.

(2) *Response to the witness statement.* Within 15 days after each party receives the other's witness statement, each party may respond by submitting a supplemental statement to the Board, with a copy to the other party. The supplemental statement may add to earlier information, or may present any written objections to the proposed questions or issue areas, or to the proposed witnesses.

(3) *The conference hearing.* (i) As soon as preparations are concluded, the Board will set a date for a hearing, to be held at a time and place determined by the Board to best serve the interests of all concerned. On request by either party, and for good cause, the Board may, in its discretion, change the time and place of the hearing. The parties are responsible for producing witnesses specified in the witness statements at the time and place set for the hearing conference. A transcript or other recording will be made.

(ii) At the conference hearing, each party may make a brief opening statement. The witnesses will be questioned based on their statements; and the Board may inquire further of each witness for information which may or may not be included in the witness' statement. At the end of each witness' testimony, either party may suggest additional questions, which the Board may ask, if no objections thereto have been sustained. The

Board may permit or require the parties or their representatives to comment further on issues of fact or law. Brief closing statements will be permitted.

(iii) Except for opening and closing statements, and any questions asked during direct testimony, or as otherwise specifically allowed by the Board, the only oral communications in the record will be those of the Board member and the witnesses. Generally, no documentary evidence will be received at a conference hearing. Although the conference hearing is informal, witnesses will be required to testify under oath.

(4) *Procedures after the hearing.* Upon request, post hearing briefs may be allowed to be submitted within an appropriate time as may be set by the Board. No rebuttal briefs shall be permitted.

(5) *Record for decision.* The record upon which the decision will be based will consist of the complaint and answer (after disposition of the objections), the hearing transcript, briefs of the parties, and any other such documents specifically admitted by the Board into the record. The Board will issue a decision as soon as practicable (whenever possible within 60 days) after all submissions are filed or after the time for filing has expired.

(c) *Method 3: Full evidentiary hearing*—(1) *Special requirement.* If the appellant decides it is appropriate to seek a full evidentiary hearing, its election letter submitted under Rule 2 must specifically indicate this choice. This method may also be used where the disputed matter involves a complex fact situation or would require extensive preparation. In such circumstances, the respondent my request, and the Board may approve, the use of this method. When this method is adopted, the Board may use the Rules of Procedure of the Board of Contract Appeals (10 CFR part 1023) as may be needed to provide an orderly proceeding.

(2) *Informal conference before the hearing.* Generally, the Board will require the parties to appear at an early prehearing conference (which, at the option of the Board, may be conducted by telephone conference call), to consider any of the following: the possibility of settlement; simplifying and clarifying issues; stipulations and admissions of facts; limitations on evidence and witnesses that will be presented at the hearing; agreement on issues in dispute; and any other matter that may aid in disposing of the appeal. The Board, in its discretion, may record the results of the conference in a document which will be made part of the record, or may have the prehearing conference transcribed.

(3) *Record for decision.* The record upon which the decision will be based by the Board will consist of the complaint and answer, other pleadings, orders, stipulations that resulted from prehearing conferences, the transcript and testimony of any witness, any additional papers or exhibits introduced at the hearing, and the briefs of the parties. The Board will issue a decision as soon as practicable (whenever possible within 120 days) after all briefs are filed or after the time for filing briefs has expired.

RULE 6. PARTIES TO THE APPEAL

Generally, the only parties to the appeal are the financial assistance recipient which received the final agency decision on which the appeal is based, and the Department. However, upon request the Board may allow a third party to present the case on appeal or appear with a party in the case, when the Board determines that the third party is a real party in interest.

RULE 7. REPRESENTATION BEFORE THE BOARD

(a) *The appellant.* An appellant may appear before the Board in person or through a representative. The appellant's notice of appeal, or the appellant's election letter submitted pursuant to Rule 2 must specify the name, address and telephone number of the appellant's representative. An attorney representing appellant shall file a written notice of appearance. If represented by someone other than an attorney, appellant shall submit a declaration, signed by a responsible official of the appellant, that the person is authorized to act for the appellant.

(b) *The respondent.* As soon as practicable, and no more than 20 days after receiving the notice of appeal under Rule 1, the attorney representing the interest of the respondent shall file a notice of appearance and shall serve the notice on the appellant, or the appellant's attorney.

RULE 8. DISMISSAL FOR FAILURE TO MEET DEADLINES AND OTHER REQUIREMENTS

(a) Whenever an appeal record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board, or otherwise indicates an intention by that party not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed, or granted, as appropriate. If the offending party does not, or is not able to respond adequately, the Board may take such action as it deems reasonable and proper.

(b) If any party fails or refuses to obey an order issued by the Board, the Board may issue such orders as it considers necessary to permit the just and expeditious conduct of the appeal, including dismissal.

RULE 9. THE BOARD'S POWERS, FUNCTIONS, AND RESPONSIBILITIES

The Board has been delegated all powers necessary for the performance of its duties, including but not limited to the authority to

conduct hearings, call witnesses, dismiss appeals with or without prejudice, order the production of documents and other evidence, administer oaths and affirmations, issue subpoenas, order depositions to be taken, take official notice of facts within general knowledge, and decide all questions of fact and law. In discharging its functions, the Board shall provide an expeditious, just, and relatively inexpensive forum for resolving the dispute.

RULE 10. *Ex Parte* COMMUNICATIONS (COMMUNICATIONS OUTSIDE THE RECORD)

(a) Written or oral communications with a Board member by one party without the participation or notice to the other about the merits of the appeal is not permitted. No member of the Board, or the Board's staff, shall consider, nor shall any person directly or indirectly involved in an appeal, submit any off the record information, whether written or oral, relating to any matter at issue in an appeal.

(b) This rule does not apply to communications among members and staff, nor to communications concerning the Board's administrative functions or procedures.

RULE 11. NOTICE AND LOCATION OF HEARINGS

Hearings will be held at such places and at such times determined by the Board to best serve the interests of the parties and the Board. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. The parties shall be given at least 15 days notice of time and place set for hearings.

RULE 12. CALCULATION OF TIME PERIODS

If a due date for the filing of any paper under these procedures falls on a Sunday, Saturday, or Federal holiday, then it shall be extended to the next calendar working day.

PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 1039.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48017, Dec. 17, 1987; 54 FR 8912, 8913, Mar. 2, 1989]

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

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