

federal register

TUESDAY, AUGUST 12, 1975



PART III:

**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Office of the Secretary



**DEPARTMENT GRANT
APPEALS PROCESS**

**Revision of Charter for Departmental
Grant Appeals Board: Procedural Rules**

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE, GENERAL
ADMINISTRATIONPART 16—DEPARTMENT GRANT
APPEALS PROCESSRevision of Charter for Departmental
Grant Appeals Board: Procedural Rules

The purpose of these amendments is to set forth procedural rules for proceedings before the Departmental Grant Appeals Board. Some incidental clarifications are made in the charter of the Board, and the entire charter (§§ 16.1 through 16.11) is redesignated as Subpart A—General while the new procedural rules are set forth as Subpart B—Practice and Procedure. For the convenience of users this part has been reprinted in full. An incidental typographical correction is made in the caption heading of the charter.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rulemaking issued August 13, 1974, and published in the FEDERAL REGISTER on August 19, 1974 (39 FR 29931). No written comments or objections have been submitted. However, a number of informal suggestions have been received and have been considered. These suggestions were for minor corrections (which have been made) and for certain clarifications in the text. We believe that the text is adequately clear, and have not changed it, but the explanations below elaborate on the intention of the questioned provisions.

The significant changes made in the rules include the following:

There is a correction of the list of programs to which this Part is applicable to show those programs which have current authority to make grants. It is made clear, however, that programs remain subject to the procedures of this Part if they meet the requirements of § 16.2 (a) and (b) even though their authority to make grants no longer exists. Although they thus remain subject to the procedures they will not be included in the list of programs with current authority included in the appendices.

There is a corrected definition in § 16.3 of "constituent agencies" and "head of the constituent agency" to reflect the present organization of the Department.

Paragraph 16.5(a)(5) relating to indirect cost and research patient hospital care rates has been amended to make explicit that the Board will hear appeals from determinations with respect to cost allocation plans negotiated with state and local units of Government, and indirect cost rates, research patient care rates and amounts, computer, fringe benefit, and other special rates negotiated with colleges and universities, state and local government agencies, hospitals and other nonprofit institutions. The clarification was suggested by the Comptroller's Office which is for this purpose the constituent agency. No narrowing of the rights of any grantee re-

sults from this change which simply adds further explicit topics of permissible appeal, which have formerly not been explicit but have been within the Board's interpretation of its jurisdiction.

In the new procedural rules, there is provision making explicit the practice of the Board not to include in panels Board members who have been associated with the particular case to be appealed (§ 16.4(b)). The intention of this rule is that no person will sit on a panel deciding a particular case when he has personally participated in the decision being reviewed or when he has had organizational responsibility for the decision being reviewed.

Provision is made for the Board Chairman to designate another member of the Board to act for him (§ 16.4(c)). The intent of this rule is to permit delegations of the Chairman's authority to other members of the Board in decisional matters. This is without derogation from the authority of the Chairman to delegate to the Executive Secretary of the Board responsibility for formal communications and other actions on behalf of the Board which do not involve the process of Board decision.

The term "Administrative Law Judge" is adopted to conform to the change in the designation of hearing examiners by the Civil Service Commission (§ 16.9).

The procedural rules are designed to make proceedings simple and prompt while at the same time providing a full opportunity for the constituent agency and the grantee and anyone else directly affected to have their views heard by an impartial decision-maker. It is intended to maintain Board procedures on an informal basis for the prompt disposition of applications to the Board, while preserving the essentials of notice and fair treatment.

In particular, it may be noted that Section 16.51 authorizes the modification or waiver of any rule in the interest of serving the ends of justice. It is the intent of this rule to achieve the flexibility contemplated in comparable situations by Rule 2 of the Federal Rules of Appellate Practice.

Section 16.6(a)(2) provides that "although the application for review need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position." The additional procedural rules which will form Subpart B include Section 16.60 specifying that a grantee who desires review shall file with the Board an application for review as prescribed in Section 16.6(a). The purpose of these rules is to maintain, without formalistic requirements, a procedure under which essential issues are identified so that the panel may determine whether oral testimony will be useful, whether written briefs or informal conferences will be useful, or whether a hearing will be required. Examination of filings made with the Board indicates that in several instances filings

fail to identify with clarity the issues involved and assume on the part of the Board prior acquaintance with the issues in dispute. No useful purpose appears served by further amending the regulations, but the attention of the grantees is called to the need for brief and discriminating identification of the real matters in dispute and of basic factual background which will normally include: the terms of the grant award; a specification of the action taken by the grantee now in dispute; the text of pertinent HEW policy statements and regulations relied on by the grantee; correspondence between the grantee and HEW relied on by the grantee; the audit report, if relevant; the determination appealed from; and a brief statement of the grantee's grounds for appeal. Agency responses should normally identify relevant statements of fact that are considered incorrect or misleading and should include such additional documents as are considered necessary for an understanding of the agency position.

Among the informal comments received was one that Section 16.7 of the charter be amended to make clear that when the Board has assumed jurisdiction pursuant to the filing of an application with the Board with respect to a determination, no action may be taken by the constituent agency pursuant to such determination until the application has been disposed of. The charter provides by way of exception that the filing of the application shall not affect the authority which the constituent agency may have to suspend assistance under a grant during appeal proceedings or otherwise to hold or defer payments under the grant. The purpose of the exception is to assure the protection of the interest of the Government where there may be an immediate threat of misuse of grant funds. The purpose of the basic rule of Section 16.7 is to protect the jurisdiction of the Board and to give the grantee assurance against adverse action taken because of the application to the Board. The power to suspend is intended for the limited purpose stated. The suggestion was that it should be made additionally clear that § 16.7 does not authorize adverse action by the agency with respect to other grants or other annual installments of multi-year grants. In the light of the purpose of the rule as explained above, we believe that the language of the rule as it now exists makes sufficiently clear that such action is forbidden, and we, therefore, see no necessity to change the language of the rule. Agencies are expected to take no action against a grantee with respect to a matter before the Board and to restrict to circumstances of urgency any use of the authority to suspend.

A number of minor typographical corrections are made: in § 16.53 the caption is amended to read "Filing and Service;" in § 16.58, two references to the Board Chairman are corrected to read "he" instead of "it"; and in § 16.60(c) the word "if" is corrected to read "whether".

Accordingly, after consultation with the Department's constituent agencies,

45 CFR Part 16 is revised as set forth below.

Effective Date. This regulation shall become effective August 12, 1975.

Date: August 1, 1975.

MALCOLM S. MASON,
Chairman, Departmental
Grant Appeals Board.

Date: August 6, 1975.

CASPAR W. WEINBERGER,
Secretary, Department of
Health, Education, and Welfare.

Subpart A—General

- Sec. 16.1 Purpose.
 - 16.2 Scope.
 - 16.3 Definitions.
 - 16.4 Grant Appeals Board; grant appeals panel.
 - 16.5 Determinations subject to the jurisdiction of the board.
 - 16.6 Submission.
 - 16.7 Effect of Submission.
 - 16.8 Substantive and procedural rules.
 - 16.9 Hearing before panel or a hearing officer.
 - 16.10 Initial decision; final decision.
 - 16.11 Separation of functions.
- Subpart B—Practice and Procedure
- 16.50 Scope of rules.
 - 16.51 Waiver, modification.
 - 16.52 Form.
 - 16.53 Filing and Service.
 - 16.54 Computation of Time.
 - 16.57 Participation by a party.
 - 16.58 Participation by interested persons.
 - 16.60 Application for review.
 - 16.61 Processing of application without a hearing.
 - 16.65 Notice of hearing.
 - 16.66 Designation of panel or hearing officer.
 - 16.67 Authority and responsibilities of panel or hearing officer.
 - 16.68 Evidence.
 - 16.69 Testimony.
 - 16.70 Exceptions to rulings.
 - 16.71 Interlocutory appeals.
 - 16.72 Official hearing record.
 - 16.73 Proposed findings of fact and conclusions.
 - 16.74 Recommended decision of hearing officer.
 - 16.80 Initial decision.
 - 16.81 Final decision.
 - 16.82 Publication of decisions.

Appendix A—Education Programs.

Appendix B—Social and Rehabilitation Service and Child Development Programs.

Appendix C—Public Health Programs.

Appendix D—Food and Drug Programs.

Appendix E—Human Development Programs.

Subpart A—General

§ 16.1 Purpose.

This part establishes a Departmental Grant Appeals Board, for the purpose of reviewing and providing hearings upon post-award disputes which may arise in the administration of or carrying out of grants under grant programs (as described in § 16.2) and which are submitted to the Board as provided in § 16.6. (Authority cited in the Appendices.)

§ 16.2 Scope.

(a) This part applies to certain determinations (as set forth in § 16.5), made after the effective date of this part, with respect to grants awarded by a constituent agency of the Department of Health,

Education, and Welfare pursuant to: (1) Any program which authorizes the making of direct, discretionary project grants or (2) any other program (including any State plan, formula program) which the head of the constituent agency, with the approval of the Secretary, may designate in whole or in part.

(b) Notwithstanding paragraph (a) of this section, this part shall not be applicable to a determination: (1) If the grantee is entitled to an opportunity for hearing with respect to such determination pursuant to 5 U.S.C. sec. 554 or (2) if, in order to meet special needs applicable to a particular program, the constituent agency has established an appropriate alternative procedure (which is available to the grantee) for the review or resolution of such determination and the Secretary has approved such procedure as an alternative to the procedures under this part.

(c) Programs subject to this part under the terms of paragraphs (a) and (b) of this section and which have current authority to make grants shall be listed in the Appendices to this part. Programs subject to this part under the terms of paragraphs (a) and (b) of this section but which do not have current authority to make grants will not be listed in the Appendices to this part.

(d) This part does not apply to any action taken pursuant to title VI of the Civil Rights Act of 1964, Part 80 of this title, and Executive Order No. 11246.

(Authority cited in the Appendices.)

§ 16.3 Definitions.

For purposes of this part:

(a) "Board" means the Departmental Grant Appeals Board, as described in paragraph (a) of § 16.4.

(b) "Board Chairman" means the Board member designated by the Secretary to serve as Chairman of the Board.

(c) "Panel" means a Grant Appeals Panel, as described in paragraph (b) of § 16.4.

(d) "Panel Chairman" means a member of a Grant Appeals Panel who has been designated as Chairman of such Panel by the Board Chairman.

(e) "Constituent agency" means the Office of the Assistant Secretary for Education (with respect to grants pursuant to section 404 of the General Education Provisions Act), the Office of Education, the National Institute of Education, the Office of the Assistant Secretary for Health (with respect to grants awarded by the Health Resources Administration, the Health Services Administration, the National Institutes of Health, the Center for Disease Control, the Food and Drug Administration, the Alcohol, Drug Abuse, and Mental Health Administration, and the Public Health Service Regional Offices), the Office of Human Development, the Administration on Aging, the Social and Rehabilitation Service, the Rehabilitation Services Administration, the Office of Assistant Secretary, Comptroller, the several Regional Offices of the Department (with respect to grants made by the Regional Directors), and any other organizational component the Secretary may designate.

(f) "Head of the constituent agency means, as appropriate, the Assistant Secretary for Education (with respect to grants pursuant to section 404 of the General Education Provisions Act), the Commissioner of Education, the Director, National Institute of Education, the Assistant Secretary for Health (with respect to grants awarded by the Health Resources Administration, the Health Services Administration, the National Institutes of Health, the Center for Disease Control, the Food and Drug Administration, the Alcohol, Drug Abuse, and Mental Health Administration, and the Public Health Service Regional Offices), the Assistant Secretary for Human Development, the Commissioner on Aging, the Administrator of the Social and Rehabilitation Service, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary, Comptroller, the several Regional Directors (with respect to grants made by them), and the head of any other organizational component which the Secretary may designate.

(g) The terms "Department" and "Departmental" refer to the U.S. Department of Health, Education, and Welfare.

(h) "Secretary" means the U.S. Secretary of Health, Education, and Welfare.

(i) "Termination" of a grant means the termination of the grantee's authority to charge allowable costs to a grant prior to the grant expiration date in the grant award document.

(j) "Grantee" means the agency, institution, organization, or individual named as grantee in the grant award document.

(Authority cited in the Appendices.)

§ 16.4 Grant Appeals Board; Grant Appeals Panel.

(a) There is established, within the Office of the Secretary, a Departmental Grant Appeals Board the members of which shall be appointed by the Secretary, for such terms as may be designated by him, to perform the functions described in this part. Subject to the limitations set forth in § 16.11, persons who are officers or employees of the Department or of any of its constituent agencies as well as other Federal officers or employees may serve on the Board. Persons who are not otherwise full-time employees of the Federal Government may, in accordance with appropriate arrangements, also be asked to serve on the Board. Service on the Board may be on a regular or an intermittent basis.

(b) The Secretary shall designate one of the members of the Board to be Chairman. The Board Chairman shall designate Grant Appeals Panels for the consideration of one or more cases submitted to the Board. Each such panel shall consist of not less than three members of the Board none of whom shall have been associated with the case to be appealed either directly or by reason of any organizational affiliation. The Board Chairman may, at his discretion, constitute the entire Board to sit for any case or class of cases. The Board Chairman

shall designate himself or any other member of a Panel to serve as Chairman.

(c) The Board Chairman may designate another member of the Board to act for him.

(Authority cited in the Appendices.)

§ 16.5 Determinations subject to the jurisdiction of the Board.

(a) Subject to § 16.2 and paragraph (b) of this section, the Board shall have jurisdiction over the following determinations of a cognizant officer or employee of a constituent agency adverse to a grantee:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project proposal in accordance with the applicable law and the terms of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void.

(5) Determinations with respect to cost allocation plans negotiated with State and local units of Government, and indirect cost rates, research patient care rates and amounts, computer, fringe benefit, and other special rates negotiated with colleges and universities, State and local Government agencies, hospitals, and other nonprofit institutions (except where the grantee has appealed to the Armed Services Board of Contract Appeals with respect to such determination under a contract with the Department).

(b) A determination described in paragraph (a) of this section may not be reviewed by the Board unless: (1) An officer or employee of the constituent agency has notified the grantee in writing of such determination and (2) such informal procedures as the agency has established by regulation for the resolution (prior to submission to the Board) of issues related to such determination have been exhausted. A notification described in subparagraph (1) of this paragraph shall set forth the reasons for the determination in sufficient detail to enable the grantee to respond and shall inform the grantee of his opportunity for review under this part. In the case of a determination under paragraph (a) (3) of this section, the failure of a constituent agency to approve a grantee's request within a reasonable time, which shall be no longer than 30 days after the postmark date of the grantee's request unless the constituent agency demonstrates to the Board Chairman good cause for not acting upon the request within such time period and has so notified the grantee

within 30 days after the postmark date of the grantee's request, shall be deemed by the Board a notification for purposes of this paragraph.

(Authority cited in the Appendices.)

§ 16.6 Submission.

(a) *Application for review.* (1) A grantee with respect to whom a determination described in § 16.5 has been made and who desires review may file with the Board an application for review of such determination. The grantee's application for review must be postmarked no later than 30 days after the postmark date of notification provided pursuant to § 16.5(b)(1) except when (i) the head of the constituent agency, by regulation, establishes a different period of time for any class of cases; (ii) the Board Chairman grants an extension of time for good cause shown; or (iii) the determination is one described in the last sentence of § 16.5(b), in which case subject to subdivisions (1) and (2) of this subparagraph, the grantee's application for review must be postmarked no later than 90 days after the postmark date of the grantee's request for permission to incur an expenditure.

(2) Although the application for review need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position. Except in the case of a determination described in the last sentence of § 16.5(b), the grantee shall attach to his submission a copy of the agency notification described in § 16.5(b)(1).

(b) *Action by Board on application for review.* (1) The Board Chairman shall promptly send a copy of the grantee's application to the appropriate constituent agency.

(2) If the Board Chairman determines, after receipt of an application for review, that the requirements of § 16.5 and paragraph (a) of this section have been satisfied, he shall promptly refer the application to a Grant Appeals Panel designated pursuant to § 16.4(b) for further proceedings under this part. If he determines that such requirements have not been met, the Board Chairman shall advise the grantee of the reasons for the rejection of the application.

(Authority cited in the Appendices.)

§ 16.7 Effect of submission.

When an application has been filed with the Board with respect to a determination, no action may be taken by the constituent agency pursuant to such determination until such application has been disposed of, except that the filing of the application shall not affect the authority which the constituent agency may have to suspend assistance under a grant during proceedings under this part or otherwise to withhold or defer payments under the grant.

(Authority cited in the Appendices.)

§ 16.8 Substantive and procedural rules.

(a) *Substantive rules.* The Panel shall be bound by all applicable laws and regulations.

(b) *Procedural rules.* (1) With respect to cases involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (a) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (b) an opportunity to be represented by counsel.

(2) With respect to cases involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity for a hearing, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on his behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(3) After consultation with the constituent agencies, the Board shall, with the approval of the Secretary, promulgate and publish rules of procedure, including rules respecting opportunity for intervention by interested third parties, relating to proceedings under this part.

(Authority cited in the Appendices.)

§ 16.9 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 16.8(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as an administrative law judge under 5 U.S.C. 3105.

(Authority cited in the Appendices.)

§ 16.10 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party, or his counsel and to the Secretary with a notice affording such party an opportunity to submit written comments thereon to the head of the appropriate constituent agency within a specified reasonable time.

(c) The initial decision of the Panel shall be transmitted to the head of the constituent agency and shall become the final decision of the constituent agency, unless, within 25 days after the expiration of the time for receipt of written comments, the head of the appropriate constituent agency advises the Board Chairman in writing of his determination to review such decision.

(d) In any case in which the head of the constituent agency modifies or reverses the initial decision of the Panel, he shall accompany such action by written statement of the grounds for such modification or reversal, which shall promptly be filed with the Secretary and the Board. In order to afford the Secretary an opportunity to study such decision of the agency head, it shall be served upon the parties no earlier than 30 days after such filing. Such decision shall not become final until it is served upon the grantee involved or his attorney.

(e) The authority to review initial decisions shall not be delegated. Review of any initial decision by the head of the constituent agency shall be based upon such decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceeding.

(Authority cited in the Appendices.)

§ 16.11 Separation of functions.

No person who participated in prior administrative consideration, or in the preparation or presentation of, a case submitted to the Board shall advise or consult with, and no person having an interest in such case shall make or cause to be made an ex parte communication to, the Panel, Board, or head of the constituent agency with respect to such case, unless all parties to the case are given timely and adequate notice of such advice, consultation, or communication, and reasonable opportunity to respond is given all parties.

(Authority cited in the Appendices.)

Subpart B—Practice and Procedure

GENERAL

§ 16.50 Scope of rules.

This subpart governs the practice and procedure for proceedings conducted under this part.

(Authority cited in the Appendices.)

§ 16.51 Waiver, modification.

Upon notice to all parties, the Board, the Board Chairman, a panel, or a hearing officer may, with respect to matters pending before them, modify or waive any rule in this subpart upon a determination that no party will be prejudiced and that the ends of justice will thereby be served.

(Authority cited in the Appendices.)

§ 16.52 Form.

Documents filed in a proceeding under this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall indicate the party or amicus curiae,

filing, and the title, if any, and address of the person signing. Copies need not be signed, but the name of the person signing the original shall be reproduced.

(Authority cited in the Appendices.)

§ 16.53 Filing and Service.

(a) All documents submitted in a proceeding shall be filed in original and four copies, and a copy shall be served on each party by the person submitting the document. Filing shall be made with the Executive Secretary of the Board, by registered or certified mail, or by personal delivery, to the Executive Secretary, Grant Appeals Board, U.S. Department of Health, Education, and Welfare, 330 Independence Avenue, SW., Washington, D.C., 20201.

(b) Service shall be made by personal delivery of one copy to each person to be served, or by mailing by first-class mail, properly addressed with postage prepaid. Service on the party's designated attorney is service upon the party.

(c) The date of filing or of service shall be the day when the document is deposited in the U.S. mail or, if the document is delivered in person, the day it is so delivered.

(d) The original of every document filed and required to be served upon parties shall be accompanied by a certificate of service signed by the party or amicus curiae making service or by his attorney or representative, stating the persons upon whom service has been made, date of service, and manner of service.

(Authority cited in the Appendices.)

§ 16.54 Computation of time.

In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(Authority cited in the Appendices.)

PARTICIPATION AND PRACTICE

§ 16.57 Participation by a party.

A party may participate in person, or by counsel, pursuant to the procedures set forth in this part, in any proceeding held pursuant to this part.

(Authority cited in the Appendices.)

§ 16.58 Participation by interested persons.

(a) (1) The constituent agency and the grantee who has filed an application for review under § 16.6 are parties to proceedings under this part. Persons or organizations other than grantees and constituent agencies shall have the right to be parties in proceedings instituted by a grantee if the final decision could directly and adversely affect them or the class they represent.

(2) Persons or organizations wishing to participate as parties shall file with the Executive Secretary of the Board, and serve on all parties, a petition within 15 days after the notice initiating the proceeding under § 16.6 has been filed. Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will represent petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) if a hearing is held, whether petitioner intends to present witnesses.

(3) The Board Chairman shall consider each petition and determine whether each petitioner has the requisite interest in the proceedings, as defined in paragraph (a) (1) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the Board Chairman may request all such petitioners to designate a single representative, or may recognize one or more petitioners to represent all the petitioners. The Board Chairman shall give each petitioner written notice of the decision on his petition, and shall serve such notice on each party. If the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

(b) (1) Any interested person or organization wishing to participate as amicus curiae shall file a petition within 15 days after the notice initiating the proceeding under § 16.6 has been filed. The petition shall concisely state (i) the petitioner's interest in the proceeding, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The Board Chairman shall grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. The Board Chairman shall give the applicant written notice of the decision on the petition, and shall serve such notice on each party. If the petition is denied, the Board Chairman shall briefly state the grounds for such denial.

(2) An amicus curiae may submit a written statement of position within 30 days of the time his petition for participation has been approved pursuant to paragraph (b) (1) of this section, and shall serve a copy of any such statement on each party. He may present a brief oral statement at the hearing, if one is held, at the point in the proceeding designated for this. He may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

(Authority cited in the Appendices.)

APPLICATION PROCEDURES

§ 16.60 Application for review.

(a) A grantee with respect to whom a determination described in § 16.5 has been made and who desires review shall file with the Board an application for review of such determination as pre-

RULES AND REGULATIONS

scribed in § 16.6(a). The application will be considered in accordance with § 16.6(b).

(b) The Board Chairman shall transmit, within 10 days of the date of which the application was filed, a copy of the application to the appropriate constituent agency indicating his decision either to accept or reject the application, and shall also advise the grantee of his decision.

(c) The panel designated to process an application shall review it and the attached copy of the agency notification described in § 16.5(b)(1) and determine whether

(1) there is a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, in which case the panel shall order a hearing under § 16.8(b)(2); or

(2) there is no such dispute, in which case the panel shall notify the parties in writing that the case will be handled under § 16.61 and indicate if the application is to be processed by written briefs alone or by written briefs in conjunction with an informal conference before the panel.

(d) If, after a hearing has been ordered, the panel or hearing officer determines, on the basis of admissions or stipulations of the parties, that there is no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the panel or hearing officer may enter an order so finding, vacating the hearing date, and directing the continuation of proceedings under § 16.61. Thereafter, the proceeding shall continue as if a hearing had not been ordered.

(Authority cited in the Appendices.)

§ 16.61 Processing of application without a hearing.

If it has been determined pursuant to § 16.60(c)(2) or (d) that a hearing is not required, the panel shall provide an opportunity for all parties, either by written briefs alone or by written briefs in conjunction with an informal conference, to present arguments and evidence supporting their respective positions. The panel shall specify such time limits for submission as it deems advisable. All such submissions shall be served by the party submitting them on all other parties and shall be filed with the panel within the time limit specified by the panel. Such submittals, together with the application and agency notice attached thereto, shall constitute the record for decision in such cases.

(Authority cited in the Appendices.)

HEARINGS

§ 16.65 Notice of hearing.

If it has been determined pursuant to § 16.60(c)(1) that a hearing should be held, a notice of hearing shall be filed and served on the parties. The notice shall contain the time, place, and nature of the hearing; the issues to be considered; and the matters of fact on which testimony is to be taken. The hearing

shall be held in such location as the panel may determine.

(Authority cited in the Appendices.)

§ 16.66 Designation of panel or hearing officer.

Hearings shall be held before a panel or before a hearing officer designated by the panel. All decisions by a panel, at all stages of the process, shall be by majority vote. If a hearing officer is designated, all motions and petitions shall be submitted to and ruled on by the hearing officer until he makes his recommended decision.

(Authority cited in the Appendices.)

§ 16.67 Authority and responsibilities of panel or hearing officer.

(a) If the panel conducts the hearing itself, it shall prepare, on the basis of the record, the initial decision, required by § 16.10, which shall include findings of fact and conclusions based thereon. If a hearing officer conducts the hearing, he shall make findings of fact and conclusions based thereon, and recommend an initial decision to the panel on the basis of the record.

(b) The panel or hearing officer shall have the duty to conduct a fair and impartial hearing, to take all necessary action to avoid delay, and to maintain order. The panel or hearing officer shall have all powers necessary to those ends, including, but not limited to, the power to:

(1) Hold conferences, including pre-hearing conferences, to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(2) Require parties to state their position with respect to the various issues in the proceeding.

(3) Direct the parties to exchange their evidentiary exhibits, witness lists, and a narrative summary of their expected testimony prior to the hearing. Where good cause exists, the parties should be afforded the right at any time to amend, by deletion or supplementation, their evidentiary exhibit and witness lists.

(4) Rule on motions, and other procedural items.

(5) Regulate the course of the hearing and conduct of counsel therein.

(6) Establish rules for media coverage of the proceedings.

(7) Examine witnesses.

(8) Receive, rule on, exclude, or limit evidence at any state of the proceeding.

(9) Fix the limits for submission of written documents.

(10) Take any action authorized by these rules.

(Authority cited in the Appendices.)

§ 16.68 Evidence.

The panel or hearing officer shall receive as evidence the testimony of witnesses and any documents which are relevant and material. Evidence may be received at the hearing even though in-

admissible under rules of evidence applicable to court procedures.

(Authority cited in the Appendices.)

§ 16.69 Testimony.

Testimony shall be given orally by witnesses at the hearing, but may, at the discretion of the panel or hearing officer, be prepared in writing and served on all parties to the hearing. A witness shall be available for cross-examination, and, at the discretion of the panel or hearing officer, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 16.70 Exceptions to rulings.

Exceptions to rulings of the panel or hearing officer are unnecessary. It is sufficient that a party, at the time the ruling of the panel or hearing officer is sought, makes known the action which he desires the panel or hearing officer to take, or his objection to an action taken, and the ground therefor.

(Authority cited in the Appendices.)

§ 16.71 Interlocutory appeals.

Except as specifically provided in these rules, rulings of the panel or hearing officer may be appealed only following the entire hearing and the panel's decision or the hearing officer's findings, conclusions, and recommended decision.

(Authority cited in the Appendices.)

§ 16.72 Official hearing record.

(a) If a hearing is held, the official hearing record shall consist of a transcript of testimony and argument, or an electronic recording thereof, or if all parties to the proceeding agree, a typewritten summary of such testimony and argument. It shall be filed with the Executive Secretary of the Board.

(b) The Department will designate the official reporter for all hearings. Transcripts, recordings, or summaries may be obtained from the official reporter by the parties and the public at rates not to exceed the applicable rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the panel or the hearing officer may authorize such corrections to the transcript as are necessary to reflect the testimony accurately.

(c) If a hearing is held, the official hearing record together with all papers, documents, exhibits, and requests filed in the proceedings (except the correspondence section of the docket) including rulings and the recommended findings, conclusions, and decision, shall constitute the record for decision.

(Authority cited in the Appendices.)

§ 16.73 Proposed findings of fact and conclusions.

If a hearing is held, each party may, within such time as the panel or hearing officer specifies, file proposed findings of fact and conclusions based thereon, and a proposed decision, together with a supporting brief expressing the reasons for

such proposals. Such proposals and briefs shall be filed and served on all parties and amici curiae. Reply briefs may be submitted within 10 days after receipt of the initial briefs and proposals, and shall be filed and served in like manner.

(Authority cited in the Appendices.)

§ 16.74 Recommended decision of hearing officer.

Within 30 days after the time for filing reply briefs, or, if the parties elect not to file briefs, within 30 days after the filing of the official hearing record, the hearing officer shall make findings of fact and conclusions based thereon and recommend a decision based on the record for decision. These findings, conclusions, and recommendations shall be certified, together with the record for decision, to the panel for its decision. The findings, conclusions, and recommended decision of the hearing officer shall be served on all parties and amici curiae to the proceeding.

(Authority cited in the Appendices.)

DECISION

§ 16.80 Initial decision.

The panel shall prepare an initial written decision, and transmit it, in accordance with § 16.10. Each party shall have an opportunity to submit written comments on the initial decision to the head of the constituent agency within the time specified by the panel.

(Authority cited in the Appendices.)

§ 16.81 Final decision.

If the head of the constituent agency advises that he intends to review the initial decision, the Board Chairman shall notify the parties of this within 10 days of the notice.

(Authority cited in the Appendices.)

§ 16.82 Publication of decisions.

All final decisions made pursuant to this part shall be made available for inspection by the Executive Secretary of the Board at the main office of the Board and at such other locations as the Executive Secretary may designate.

(Authority cited in the Appendices.)

APPENDICES

This part is issued under 5 U.S.C. 301 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 F.R. 2053, 67 Stat. 631 and is applicable to programs carried out under the following authorities:

APPENDIX A—EDUCATION PROGRAMS

- (1) Section 306 of the Elementary and Secondary Education Act (20 U.S.C. 844b);
- (2) Title V of the Elementary and Secondary Education Act (except as to matters governed by part E of such title) (20 U.S.C. 861);
- (3) Title VII of the Elementary and Secondary Education Act (20 U.S.C. 880b);
- (4) Sections 807, 808, 809, and 810 of the Elementary and Secondary Education Act (20 U.S.C. 887, 887a, 887b, 887c);
- (5) Title IX of the Elementary and Secondary Education Act (20 U.S.C. 900);
- (6) Parts C, D, E, F, and G of the Education of the Handicapped Act (20 U.S.C. 1421, 1431, 1441, 1451, and 1461);

- (7) Section 309 of the Adult Education Act (20 U.S.C. 1206);
- (8) Section 314 of the Adult Education Act, as added by Part C of the Indian Education Act (20 U.S.C. 1211a);
- (9) Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c-2000c-9);
- (10) The Cooperative Research Act (20 U.S.C. 331a-332b);
- (11) Sections 131(a), 142(c), and 191 of the Vocational Education Act (20 U.S.C. 1281(a), 1302(d), 1391);
- (12) Section 106 of the Higher Education Act (20 U.S.C. 1005a);
- (13) Parts A and B of title II of the Higher Education Act (20 U.S.C. 1021, 1031);
- (14) Title III of the Higher Education Act (20 U.S.C. 1051);
- (15) Section 417B of the Higher Education Act of 1965 (20 U.S.C. 1070d-1);
- (16) Title IV-D of the Higher Education Act (20 U.S.C. 1087a);
- (17) Section 504 and parts B-1, C, D, E, and F of the Education Professions Development Act (20 U.S.C. 1101, 1111, 1119, 1119a, 1119b, 1119c);
- (18) Title VI of the National Defense Education Act (20 U.S.C. 511);
- (19) The Environmental Education Act (20 U.S.C. 1531);
- (20) The Drug Abuse Education Act (21 U.S.C. 1001);
- (21) Part IV of title III of the Communications Act of 1934 (47 U.S.C. 390);
- (22) Section 411 of the General Education Provisions Act (20 U.S.C. 1222);
- (23) International Education Act of 1966 (20 U.S.C. 1171);
- (24) Direct project grants under sections 231(a), 241, 251, 309 of the Manpower Development and Training Act (42 U.S.C. 2601(a), 2610a, 2610b, 2619);
- (25) Section 404 of the General Education Provisions Act (20 U.S.C. 1221d);
- (26) Direct grants under section 405 of the General Education Provisions Act (20 U.S.C. 1221e);
- (27) Emergency School Aid Act, except for determinations described under § 16.5(a) (1) and (4) (20 U.S.C. 1601 et seq.);
- (28) The Follow Through program under section 222(2) (2) of the Economic Opportunity Act of 1964, except for determinations described under § 16.5(a) (1) and (4) (42 U.S.C. 2809(a) (2));
- (29) Title III of Public Law 81-874, as added by Part A of the Indian Education Act (20 U.S.C. 241aa).

APPENDIX B—SOCIAL AND REHABILITATION SERVICE PROGRAMS

- (1) Section 222 (a) and (b) of the Social Security Amendments of 1972 (P.L. 92-603) (42 U.S.C. 1395f note, 1395b-1).
- (2) Section 426 of the Social Security Act (42 U.S.C. 626).
- (3) Section 707 of the Social Security Act (42 U.S.C. 906).
- (4) Section 1110 of the Social Security Act (42 U.S.C. 1310).
- (5) Section 111E of the Social Security Act (42 U.S.C. 1315).
- (6) Sections 121, 122, 141 of the Developmental Disabilities Services and Facilities Construction Act (42 U.S.C. 2661, 2661a, 2678).
- (7) Sections 202, 203, 301, 302 and 304 of the Rehabilitation Act of 1973 (29 U.S.C. 762, 763, 771, 772, 774).
- (8) Section 1115 of the Social Security Act (42 U.S.C. 1315).
- (9) Sections 305, 401, and 501 of the Older Americans Act of 1965 (42 U.S.C. 3024a, 3031, 3041).

APPENDIX C—PUBLIC HEALTH PROGRAMS

- (1) Section 225 of the Public Health Service Act (42 U.S.C. 234).

- (2) Section 301 of the Public Health Service Act (42 U.S.C. 241).
- (3) Section 303 of the Public Health Service Act (42 U.S.C. 242a).
- (4) Section 304 of the Public Health Service Act (42 U.S.C. 242b).
- (5) Section 305 of the Public Health Service Act (42 U.S.C. 242d).
- (6) Section 308 of the Public Health Service Act (42 U.S.C. 242f).
- (7) Section 309 of the Public Health Service Act (42 U.S.C. 242g).
- (8) Section 310 of the Public Health Service Act (42 U.S.C. 242h).
- (9) Section 314 (b), (c), and (e) of the Public Health Service Act (42 U.S.C. 246 (b), (c), and (e)).
- (10) Section 317 of the Public Health Service Act (42 U.S.C. 247b).
- (11) Section 318 of the Public Health Service Act (42 U.S.C. 247c).
- (12) Section 393 of the Public Health Service Act (42 U.S.C. 280b-3).
- (13) Section 394 of the Public Health Service Act (42 U.S.C. 280b-4).
- (14) Section 395 of the Public Health Service Act (42 U.S.C. 280b-5, 6).
- (15) Section 396 of the Public Health Service Act (42 U.S.C. 280b-7).
- (16) Section 397 of the Public Health Service Act (42 U.S.C. 280b-8).
- (17) Section 398 of the Public Health Service Act (42 U.S.C. 280b-9).
- (18) Section 402 of the Public Health Service Act (42 U.S.C. 282).
- (19) Section 407 of the Public Health Service Act (42 U.S.C. 286a).
- (20) Section 412 of the Public Health Service Act (42 U.S.C. 287a).
- (21) Section 413 of the Public Health Service Act (42 U.S.C. 287b).
- (22) Section 422 of the Public Health Service Act (42 U.S.C. 288a).
- (23) Section 431 of the Public Health Service Act (42 U.S.C. 289a).
- (24) Section 433 of the Public Health Service Act (42 U.S.C. 289c).
- (25) Section 434 of the Public Health Service Act (42 U.S.C. 289c-1).
- (26) Section 444 of the Public Health Service Act (42 U.S.C. 289g).
- (27) Section 453 of the Public Health Service Act (42 U.S.C. 289k).
- (28) Section 704 of the Public Health Service Act (42 U.S.C. 292c).
- (29) Section 720 of the Public Health Service Act (42 U.S.C. 293).
- (30) Section 767 of the Public Health Service Act (42 U.S.C. 295e-1).
- (31) Section 768 of the Public Health Service Act (42 U.S.C. 295e-2).
- (32) Section 769 of the Public Health Service Act (42 U.S.C. 295e-3).
- (33) Section 769A of the Public Health Service Act (42 U.S.C. 295e-4).
- (34) Section 771 of the Public Health Service Act (42 U.S.C. 295f-1).
- (35) Section 772 of the Public Health Service Act (42 U.S.C. 295f-2).
- (36) Section 773 of the Public Health Service Act (42 U.S.C. 295f-3).
- (37) Section 774 of the Public Health Service Act (42 U.S.C. 295f-4).
- (38) Section 784 of the Public Health Service Act (§ 106(c) Public Law 92-157).
- (39) Section 791 of the Public Health Service Act (42 U.S.C. 295h).
- (40) Section 792 of the Public Health Service Act (42 U.S.C. 295h-1).
- (41) Section 793 of the Public Health Service Act (42 U.S.C. 295h-2).
- (42) Section 794A of the Public Health Service Act (42 U.S.C. 295h-3a).
- (43) Section 794B of the Public Health Service Act (42 U.S.C. 295h-3b).
- (44) Section 794C of the Public Health Service Act (42 U.S.C. 295h-3c).
- (45) Section 802 of the Public Health Service Act (42 U.S.C. 296a).

RULES AND REGULATIONS

(46) Section 805 of the Public Health Service Act (42 U.S.C. 296d).
 (47) Section 810 of the Public Health Service Act (42 U.S.C. 296i).
 (48) Section 821 of the Public Health Service Act (42 U.S.C. 297).
 (49) Section 868 of the Public Health Service Act (42 U.S.C. 298a-7).
 (50) Section 903 of the Public Health Service Act (42 U.S.C. 299c).
 (51) Section 904 of the Public Health Service Act (42 U.S.C. 299d).
 (52) Section 1001 of the Public Health Service Act (42 U.S.C. 300).
 (53) Section 1003 of the Public Health Service Act (42 U.S.C. 300a-1).
 (54) Sections 1004 and 1005 of the Public Health Service Act (42 U.S.C. 300a-2, 300a-3).
 (55) Section 1101 of the Public Health Service Act (42 U.S.C. 300b).
 (56) Section 1102 of the Public Health Service Act (42 U.S.C. 300b-1).
 (57) Section 1111(a)(1) of the Public Health Service Act (42 U.S.C. 300c(a)(1)).
 (58) Section 1111(a)(2) of the Public Health Service Act (42 U.S.C. 300c(a)(2)).
 (59) Section 220 of the Community Mental Health Centers Act (42 U.S.C. 2688).
 (60) Section 241 of the Community Mental Health Centers Act (42 U.S.C. 2688f).
 (61) Section 242 of the Community Mental Health Centers Act (42 U.S.C. 2688g).
 (62) Section 243 of the Community Mental Health Centers Act (42 U.S.C. 2688h).
 (63) Section 246 of the Community Mental Health Centers Act (42 U.S.C. 2688j-1).
 (64) Section 247 of the Community Mental Health Centers Act (2688j-2).
 (65) Section 251 of the Community Mental Health Centers Act (42 U.S.C. 2688(k)).
 (66) Section 252 of the Community Mental Health Centers Act (42 U.S.C. 2688l).

(67) Section 253 of the Community Mental Health Centers Act (42 U.S.C. 2688m-1).
 (68) Section 256 of the Community Mental Health Centers Act (42 U.S.C. 2688n-1).
 (69) Section 264 of the Community Mental Health Centers Act (42 U.S.C. 2688r).
 (70) Section 271 of the Community Mental Health Centers Act (42 U.S.C. 2688u).
 (71) Section 272 of the Community Mental Health Centers Act (42 U.S.C. 2688v).
 (72) Section 410 of Public Law 92-255—The Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1177).
 (73) Section 501 of the Coal Mine Health and Safety Act (30 U.S.C. 951).
 (74) Section 20 of the Occupational Health and Safety Act (29 U.S.C. 669).
 (75) Section 21 of the Occupational Health and Safety Act (29 U.S.C. 670).
 (76) Section 503(2) of the Social Security Act (42 U.S.C. 703(2)).
 (77) Section 504(2) of the Social Security Act (42 U.S.C. 704(2)).
 (78) Section 511 of the Social Security Act (42 U.S.C. 711).
 (79) Section 512 of the Social Security Act (42 U.S.C. 712).
 (80) Section 101 of the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801).
 (81) Section 201 of the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801).
 (82) Section 776 of the Public Health Service Act (42 U.S.C. 295f-6).
 (83) Section 1202 of the Public Health Service Act (42 U.S.C. 300d-1).
 (84) Section 1203 of the Public Health Service Act (42 U.S.C. 300d-2).
 (85) Section 1204 of the Public Health Service Act (42 U.S.C. 300d-3).
 (86) Section 1205 of the Public Health Service Act (42 U.S.C. 300d-4).

(87) Section 1303 of the Public Health Service Act (42 U.S.C. 300e-2).
 (88) Section 1304 of the Public Health Service Act (42 U.S.C. 300e-3).
 (89) Sections 222 and 232 of the Economic Opportunity Act, except for determinations described under § 16.5(a)(1) and (4) (42 U.S.C. 2809, 2825).
 (90) Section 104(b)(1) of the Indian Self-Determination Act (25 U.S.C. 450(h)(b)(1)).

APPENDIX D—FOOD AND DRUG PROGRAMS

(1) Food and drug research—project grants, section 301 of the Public Health Service Act (42 U.S.C. 241).
 (2) Food and drug research—product safety research, section 301(d) of the Public Health Service Act (42 U.S.C. 241).
 (3) Food and drug research—pesticides research, section 301(d) of the Public Health Service Act (42 U.S.C. 241).
 (4) Radiological Health Research—section 356(b) of the Public Health Service Act (42 U.S.C. 263d).

APPENDIX E—HUMAN DEVELOPMENT PROGRAMS

(1) Sections 102, 201, 301, and 302 of the Juvenile Delinquency Prevention Act (42 U.S.C. 3812, 3861, 3871, 3872).
 (2) Sections 207(g), 308, 403, 404, 411, 421, 501, and 511 of the Older Americans Act of 1965 (42 U.S.C. 3017(g), 3028, 3033, 3034, 3035, 3036, 3041, 3042).
 (3) Sections 222 and 232 of the Economic Opportunity Act, except for determinations described under § 16.5(a)(1) and (4) (42 U.S.C. 2809, 2825).
 (4) Section 426 of the Social Security Act (42 U.S.C. 626).

[FR Doc. 75-21050 Filed 8-11-75; 8:45 am]