

Department of State

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§ 5.3 Rules of procedure, description of forms available or the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.

Rules of procedure regarding the following listed matters may be consulted

under the corresponding regulations referenced in § 5.4, or obtained upon application to the offices listed below. Forms pertaining to the following listed matters, and instructions relating thereto may also be obtained at the offices indicated below:

Subject matter	Office	Address
Appointment of Foreign Service Officers.	Board of Examiners for the Foreign Service.	Department of State, Room 7314, 1800 N. Kent St., Arlington, Va. 22209.
Authentication and other services	Document and Reference Division.	Department of State, Room 2815, 22d and D Sts. NW., Washington, DC 20520.
Claims and stolen property	Legal Adviser	Department of State, 2201 C Street NW., Washington, DC 20520.
International educational and cultural exchange program.	Bureau of Educational and Cultural Affairs.	Department of State, 2201 C Street NW., Washington, DC 20520.
International traffic in arms	Office of Munitions Control ...	Department of State, Room 800, 1700 N. Lynn St., Arlington, Va. 22209.
Nationality and passports	Passport Office	Department of State, Room 362, 1425 K St., NW., Washington, DC 20524.
Protection and welfare of U.S. citizens, shipping and seamen, and other consular services abroad.	Office of Special Consular Services.	Department of State, 2201 C Street NW., Washington, DC 20520.
Visa issuance	Visa Office	Department of State, Annex 2, 515 22d Street NW., Washington, DC 20520.

§ 5.4 Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the agency.

(a) The regulations of the Department of State required to be published under the provisions of the Administrative Procedure Act are found in the Code of Federal Regulations and the FEDERAL REGISTER. Any person desiring information with respect to a particular procedure should examine the pertinent regulation cited hereafter.

(b) The following are citations to regulations within the scope of this section.

- (1) Acceptance of Gifts and Decorations from Foreign Governments. 22 CFR part 3 et seq.
- (2) Employee Responsibility and Conduct. 22 CFR part 10 et seq.
- (3) Appointment of Foreign Service Officers. 22 CFR part 11 et seq.
- (4) Fees for Services in the United States, fees and Charges, Foreign service. 22 CFR part 21 et seq.; 22 CFR part 22 et seq.
- (5) Claims and Stolen Property. 22 CFR part 31 et seq.
- (6) Issuance of Visas. 22 CFR parts 41-42 et seq.
- (7) Nationality and Passports. 22 CFR part 50 et seq.

- (8) International Educational and Cultural Exchanges. 22 CFR part 61 et seq.
- (9) Protection and Welfare of Americans Abroad. 22 CFR part 71 et seq.
- (10) Shipping and Seamen Abroad. 22 CFR part 81 et seq.
- (11) Other Consular Services Abroad. 22 CFR part 91 et seq.
- (12) Economic, Commercial and Civil Air Functions Abroad. 22 CFR part 101 et seq.
- (13) International Traffic in Arms. 22 CFR part 121 et seq.
- (14) Certificates of Authentication. 22 CFR part 131 et seq.
- (15) Civil Rights. 22 CFR part 141 et seq.
- (16) Department of State Procurement. 41 CFR part 6-1 et seq.

(c) These regulations are supplemented from time to time by amendments appearing initially in the FEDERAL REGISTER.

PART 7—BOARD OF APPELLATE REVIEW

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AUTHORITY: Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended, 22 U.S.C. 211a, 2658; secs. 104, 360, 66 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36 FR 10603; 3 CFR 1966-1970 Comp., page 507; 22 CFR 60-65; E.O. 12532, 50 FR 36861 7.4 also issued under 22 U.S.C. 3926.

SOURCE: 44 FR 68825, Nov. 30, 1979, unless otherwise noted.

§ 7.1 Definitions.

(a) *Board* means the Board of Appellate Review or the panel of three members considering an appeal.

(b) *Department* means the Department of State.

(c) *Party* means the appellant or the Department of State.

§ 7.2 Establishment of Board of Appellate Review; purpose.

(a) There is hereby established the Board of Appellate Review of the Department of State to consider and determine appeals within the purview of § 7.3. The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

(b) For administrative purposes, the Board shall be part of the Office of the Legal Adviser. The merits of appeals or decisions of the Board shall not be subject to review by the Legal Adviser or any other Department official, except that the Department may administratively vacate a Certificate of Loss of Nationality on its own initiative at any time, notwithstanding an intervening decision by the Board sustaining the Department's original determination.

[44 FR 68825, Nov. 30, 1979, as amended at 56 FR 55457, Oct. 28, 1991]

§ 7.3 Jurisdiction.

The jurisdiction of the Board shall include appeals from decisions in the following cases:

(a) Appeals from administrative determinations of loss of nationality or expatriation under subpart C of part 50 of this chapter.

(b) Appeals from administrative decisions denying, revoking, restricting or invalidating a passport under §§ 51.70 and 51.71 of this chapter.

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(c) Appeals from final decisions of contracting officers arising under contracts or grants of the Department of State, not otherwise provided for in the Department of State contract appeal regulations (part 6-60 of title 41).

(d) Appeals from administrative determinations under § 64.1(a) of this chapter, denying U.S. Government assistance to U.S. nationals who do not comply with the Fair Labor Standards in § 61.2 of this chapter.

(e) Appeals from administrative decisions of the Department of State in such other cases and under such terms of reference as the Secretary of State may authorize.

[44 FR 68825, Nov. 30, 1979, as amended at 51 FR 15319, Apr. 23, 1986]

§ 7.4 Membership and organization.

(a) *Membership.* The Board shall consist of regular and ad hoc members as the Legal Adviser may designate. Regular members shall serve on a fulltime basis. Ad hoc members may be designated from among senior officers of the Department of State or from among persons not employed by the Department. Regular and ad hoc members shall be attorneys in good standing admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) *Chairperson.* The Legal Adviser shall designate a regular member of the Board as chairperson. A member designated by the chairperson shall act in the absence of the chairperson. The chairperson or designee shall preside at all proceedings before the Board, regulate the conduct of such proceedings, and pass on all issues relating thereto.

(c) *Composition.* In considering an appeal, the Board shall act through a panel of three members, not more than two of whom shall be ad hoc members.

(d) *Rules of procedure.* The Board may adopt and promulgate rules of procedure approved by the Secretary of State as may be necessary to govern its proceedings.

(22 U.S.C. 2658 and 3926)

[44 FR 68825, Nov. 30, 1979, as amended at 49 FR 16989, Apr. 23, 1984]

§ 7.5 Procedures.

(a) *Filing of appeal.* A person who has been the subject of an adverse decision in a case falling within the purview of § 7.3 shall be entitled upon written request made within the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity reasons for the appeal. The appeal may be accompanied by a legal brief. An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

(b) *Time limit on appeal.* (1) A person who contends that the Department's administrative determination of loss of nationality or expatriation under subpart C of part 50 of this chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality or a certificate of expatriation.

(2) A person who has been subject of an adverse decision under § 51.89, of this Chapter shall be entitled to appeal the decision to the Board upon written request made within 60 days after receipt of notice of such decision.

(3) A national who has been subject of an adverse decision under § 64.1(a) of this chapter shall be entitled to appeal the decision to the Board within 30 days after receipt of notice of such decision.

(4) Time limits for other appeals shall be established by the Board as appropriate.

(c) *Department case record.* Upon the written request of the Board, the office or bureau in the Department of State responsible for the decision from which the appeal was taken shall assemble and transmit to the Board within 45 days the record on which the Department's decision in the case was based. The case record may be accompanied by a memorandum setting forth the position of the Department on the case.

(d) *Briefs.* Briefs in support of or in opposition to an appeal shall be submitted in triplicate to the Board. The appellant shall submit his or her brief within 60 days after filing of the ap-

peal. The Department shall then file a brief within 60 days after receipt of a copy of appellant's brief. Reply briefs, if any, shall be filed within 30 days after the date the Department's brief is filed with the Board. Extension of time for submission of a reply brief may be granted by the Board for good cause shown. Posthearing briefs may be submitted upon such terms as may be agreed to by the parties and the presiding member of the Board at the conclusion of a hearing.

(e) *Hearing.* An appellant shall be entitled to a hearing upon written request to the Board. An appellant may elect to waive a hearing and submit his or her appeal for decision on the basis of the record before the Board.

(f) *Pre-hearing conference.* Whether there is a hearing before the Board on an appeal or whether an appeal is submitted for decision on the record without a hearing the Board may call upon the parties to appear before a member of the Board for a conference to consider the simplification or clarification of issues and other matters as may aid in the disposition of the appeal. The results of the conference shall be reduced to writing by the presiding Board member, and this writing shall constitute a part of the record.

(g) *Admissibility of evidence.* Except as otherwise provided in § 7.7 and § 7.8, the parties may introduce such evidence as the Board deems proper. Formal rules of evidence shall not apply, but reasonable restrictions shall be imposed as to the relevancy, competency and materiality of evidence presented.

(h) *Depositions.* The Board may, upon the written request of either party or upon agreement by the parties, permit the taking of the testimony of any person by deposition upon oral examination or written interrogatories for use as evidence in the appeal proceedings. The deponent shall be subject to cross-examination either by oral examination or by written interrogatories by the opposing party or by the Board. Leave to take a deposition shall not be granted unless it appears impracticable to require the deponent's testimony at the hearing on the appeal, or unless the taking of a deposition is deemed to be warranted for other valid reasons.

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(i) *Record of proceedings.* The record of proceedings before the Board shall consist of the Department's case record, briefs and other written submissions of the parties, the stipulation of facts, if any, the evidence admitted, and the transcript of the hearing if there is a hearing. The record shall be available for inspection by the parties at the Office of the Board.

(j) *Scope of review.* Except as otherwise provided in §§ 7.7 and 7.8, the Board shall review the record in the case before it. The Board shall not consider argument challenging the constitutionality of any law or of any regulation of the Department of State or take into consideration any classified or administratively controlled material.

(k) *Appearance before the Board.* Any party to any proceeding before the Board is entitled to appear in person or by or with his or her attorney, who must possess the requisite qualifications, set forth in § 7.12, to practice before the Board.

(l) *Failure to prosecute an appeal.* Whenever the record discloses the failure of an appellant to file documents required by these regulations, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution of an appeal, the Board may in its discretion terminate the proceedings without prejudice to the later reinstatement of the appeal for good cause shown.

[44 FR 68825, Nov. 30, 1979, as amended at 51 FR 15319, Apr. 23, 1986; 52 FR 41560, Oct. 29, 1987]

§ 7.6 Hearings.

(a) *Notice and place of hearing.* The parties shall be given at least 15 days notice in writing of the scheduled date and place of a hearing on an appeal. The Board shall have final authority to fix or change any hearing date giving consideration to the convenience of the parties. Hearings shall be held at the Department of State, Washington, DC, unless the Board determines otherwise.

(b) *Conduct of hearing.* The appellant may appear and testify on his own behalf. The parties may present witnesses, offer evidence and make argument. The appellant and witnesses may be examined by any member of the

Board, by the Department, and by the appellant's attorney, if any. If any witness whom the appellant or the Department wishes to call is unable to appear personally, the Board in its discretion, may accept an affidavit by the witness or grant leave to take the deposition of such witness. Any such witness will be subject to cross examination by means of sworn responses to interrogatories posed by the opposing party. The appellant and the Department shall be entitled to be informed of all evidence before the Board and of the source of such evidence, and to confront and cross-examine any adverse witness. The Board may require a stipulation of facts prior to or at the beginning of the hearing and may require supplemental statements on issues presented to it, or confirmation, verification or authentication of any evidence submitted by the parties. The parties shall be entitled to reasonable continuances upon request for good cause shown.

(c) *Privacy of hearing.* The hearing shall be private unless an appellant requests in writing that the hearing be open to the public. Attendance at the hearing shall be limited to the appellant, attorneys of the parties, the members of the Board, Department personnel who are directly involved in the presentation of the case, official stenographers, and the witnesses. Witnesses shall be present at the hearing only while they are giving testimony or when otherwise directed by the Board.

(d) *Transcript of hearing.* A complete verbatim transcript shall be made of the hearing by a qualified reporter, and the transcript shall constitute a permanent part of the record. Upon request, the appellant shall have the right to inspect the complete transcript and to purchase a copy thereof.

(e) *Nonappearance of a party.* The unexcused absence of a party at the time and place set for a hearing shall not be occasion for delay. In the event of such absence, the case will be regarded as having been submitted by the absent party on the record before the Board.

[44 FR 68825, Nov. 30, 1979, as amended at 53 FR 39589, Oct. 11, 1988]

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§ 7.7 Passport cases.

(a) *Scope of review.* With respect to appeals taken from decisions of the Assistant Secretary for Consular Affairs denying, revoking, restricting, or invalidating a passport under §§ 51.70 and 51.71 of this chapter, the Board's review, except as provided in paragraph (b) of this section, shall be limited to the record on which the Assistant Secretary's decision was based.

(b) *Admissibility of evidence.* The Board shall not receive or consider evidence or testimony not presented at the hearing held under §§ 51.81–51.89 of this chapter unless it is satisfied that such evidence or testimony was not available or could not have been discovered by the exercise of reasonable diligence prior to such hearing.

[44 FR 68825, Nov. 30, 1979, as amended at 53 FR 39589, Oct. 11, 1988]

§ 7.8 South African Fair Labor Standards cases.

(a) *Scope of review.* With respect to appeals taken from decisions of the Assistant Secretary for African Affairs denying assistance to U.S. nationals operating in South Africa which do not comply with the Fair Labor Standards outlined in § 61.2 of the chapter, the Board's review except as provided in paragraph (b) of this section shall be limited to the record on which the Assistant Secretary's decision was based.

(b) *Admissibility of evidence.* The Board shall not receive or consider evidence or testimony not presented pursuant to § 63.3(a) or § 63.3(b) of this chapter unless it is satisfied that such evidence was not available or could not have been discovered by the exercise of reasonable diligence prior to entry of the decision of the Assistant Secretary for African Affairs.

[51 FR 15319, Apr. 23, 1986, as amended at 52 FR 41560, Oct. 29, 1987; 53 FR 39589, Oct. 11, 1988]

§ 7.9 Decisions.

The Board shall decide the appeal on the basis of the record of the proceedings. The decision shall be by majority vote in writing and shall include findings of fact and conclusions of law on which it is based. The decision of the Board shall be final, subject to

§§ 7.2(b) and 7.10. Copies of the Board's decision shall be forwarded promptly to the parties.

[56 FR 55457, Oct. 28, 1991]

§ 7.10 Motion for reconsideration.

The Board may entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

[44 FR 68825, Nov. 30, 1979. Redesignated at 51 FR 15319, Apr. 23, 1986]

§ 7.11 Computation of time.

In computing the period of time for taking any action under this part, the day of the act, event, or notice from which the specified period of time begins to run shall not be included. The last day of the period shall be included, unless it falls on a Saturday, Sunday, or a legal holiday, in which event the period shall extend to the end of the next day which is not a Saturday, Sunday, or a legal holiday. The Board for good cause shown may in its discretion enlarge the time prescribed by this part for the taking of any action.

[44 FR 68825, Nov. 30, 1979. Redesignated at 51 FR 15319, Apr. 23, 1986]

§ 7.12 Attorneys.

(a) Attorneys at law who are admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States, and who are members of the Bar in good standing, may

practice before the Board unless disqualified under paragraph (b) of this section or for some other valid reason.

(b) No attorney shall be permitted to appear before the Board as attorney representing an appellant if he or she is subject to the conflict of interest provisions of chapter 11 of title 18 of the United States Code.

[44 FR 68825, Nov. 30, 1979. Redesignated at 51 FR 15319, Apr. 23, 1986]

PART 8—ADVISORY COMMITTEE MANAGEMENT

Sec.

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AUTHORITY: 22 U.S.C. 2658; sec. 8(a) Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11769; and OMB Circular A-63, Rev.

SOURCE: 40 FR 28606, July 8, 1975, unless otherwise noted.

§ 8.1 Authorities.

(a) *Regulatory authorities.* (1) These regulations are issued to implement the Federal Advisory Committee Act, Pub. L. 92-463, which became effective January 5, 1973, and Office of Management and Budget Circular No. A-63 of March 27, 1974. These regulations also are in accordance with Executive Order 11769 of February 21, 1974, and the responsibilities of the Secretary of State under 22 U.S.C. 2656.

(2) These regulations apply to any advisory committee which provides advice to the Department of State or any officer of the Department. However, to the extent that an advisory committee is subject to particular statutory provisions, which are inconsistent with the Federal Advisory Committee Act, these regulations do not apply.

(b) *Delegated authority.* (1) The Deputy Under Secretary for Management has been designated by the Secretary

(Delegation of Authority No. 125 signed November 7, 1972) to have full responsibility for the Committee Management function.

(2) The Advisory Committee Management Officer in the Management Systems Staff administers the Committee Management Program for the Deputy Under Secretary for Management.

§ 8.2 Policy.

(a) Advisory Committees are to be used for obtaining advice and recommendations on matters for which they were established, and may be utilized only when the information sought is not otherwise efficiently and economically available.

(b) Unless provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions and any decision taken pursuant to the advice or recommendation of an advisory committee is the responsibility of the appropriate Department officer. For the purposes of this provision, "Presidential directive" includes an executive order or executive memorandum.

(c) Meetings of advisory committees will be open to the public unless there is a compelling reason which requires nondisclosure of the subject matter in accordance with public law (5 U.S.C. 552 (b)).

§ 8.3 Scope.

(a) The Federal Advisory Committee Act applies to committees "established" by the Government and to committees "utilized" though not established by the Government.

(1) The President and the Congress, or the Department in consultation with the Office of Management and Budget, may *establish* a group which shall be known as an advisory committee for the purpose of obtaining advice or recommendations and which shall be subject to the Federal Advisory Committee Act throughout its existence.

(2) Though not established by the President or the Department, a group *utilized* for the purpose of obtaining advice or recommendations must file a charter prior to a meeting, and otherwise conform to the requirements of