

Office of the Secretary, Interior

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is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) *Sanctions.* The administrative law judge, board, or Director who has responsibility for the matter with respect to which a prohibited communication has been knowingly made may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why its claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; disciplining offending Office personnel pursuant to the Department's standards of conduct (43 CFR part 20); and invoking such sanctions against other offending persons as may be appropriate under the circumstances.

(c) *Disqualification.* (1) An Office of Hearings and Appeals deciding official must withdraw from a case if circumstances exist that would disqualify a judge in such circumstances under the recognized canons of judicial ethics.

(2) A party may file a motion seeking the disqualification of a deciding official, setting forth in detail the circumstances that the party believes require disqualification. Any supporting facts must be established by affidavit or other sufficient evidence. A copy of the motion should be sent to the Director.

(3) The head of the appropriate unit within the Office or the Director may decide whether disqualification is required if the deciding official does not withdraw under paragraph (c)(1) of this section or in response to a motion under paragraph (c)(2) of this section.

(4) For purposes of this section, "deciding official" includes an attorney decision maker or Indian probate judge as defined in § 4.201, an administrative

law judge, an administrative judge, or a member of any Board.

[36 FR 7186, Apr. 15, 1971, as amended at 50 FR 43705, Oct. 29, 1985; 53 FR 49660, Dec. 9, 1988; 70 FR 11812, Mar. 9, 2005]

§ 4.28 Interlocutory appeals.

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from an Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

§ 4.29 Remands from courts.

Whenever any matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate Appeals Board, a report recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

§ 4.30 Information required by forms.

Whenever a regulation of the Office of Hearing and Appeals requires a form approved or prescribed by the Director, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

§ 4.31 Request for limiting disclosure of confidential information.

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of

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title 18 of the United States Code (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must indicate in the document that it is exempt, or contains information which is exempt, from disclosure;

(2) Must request the presiding officer or appeals board not to disclose such information except to the parties to the proceeding under the conditions provided in paragraphs (b) and (c) of this section, and must serve the request upon the parties to the proceeding. The request shall include the following items:

(i) A copy of the document from which has been deleted the information for which the person requests nondisclosure; if it is not practicable to submit such copy of the document because deletion of the information would render the document unintelligible, a description of the document may be substituted;

(ii) A statement specifying why the information is confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information:

(iii) A statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(b) If information is submitted in accordance with paragraph (a) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with part 2 of this title, or upon request from a party to the proceeding under the restrictions stated in paragraph (c) of this section.

(c) At any time, a party may request the presiding officer or appeals board to direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding officer or board will so direct, unless paragraph (d) of this section is applicable, if the party requesting the information agrees under oath in writing:

(1) Not to use or disclose the information except in the context of the pro-

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ceeding conducted pursuant to this part; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(d) If any person submitting a document in a proceeding under this Part other than a hearing conducted pursuant to 5 U.S.C. 554 claims that a disclosure of information in that document to another party to the proceeding is prohibited by law, notwithstanding the protection provided under paragraph (c) of this section, such person:

(1) Must indicate in the original document that it contains information of which disclosure is prohibited;

(2) Must request that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party or parties, and serve the request upon the parties to the proceeding. The request shall include a copy of the document or description as required by paragraph (a)(2)(i) of this section and state why disclosure is prohibited, citing pertinent statutory or regulatory authority. If the prohibition on disclosure is intended to protect the interest of a person who is not a party to the proceeding, the party making the request must demonstrate that such person refused to consent to the disclosure of the evidence to other parties to the proceeding.

(3) If the presiding officer or an appeals board denies the request, the person who made the request shall be given an opportunity to withdraw the evidence before it is considered by the presiding official or board unless a Freedom of Information Act request, administrative appeal from the denial of a request, or lawsuit seeking release of the information is pending.

(e) If the person submitting a document does not submit the copy of the document or description required by paragraph (a)(2)(i) or (d)(2) of this section, the presiding officer or appeals board may assume that there is no objection to public disclosure of the document in its entirety.

(f) Where a decision by a presiding officer or appeals board is based in whole or in part on evidence not included in

the public record or disclosed to all parties, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

[53 FR 49661, Dec. 9, 1988]

Subpart C—Special Rules of Practice Before the Interior Board of Contract Appeals

AUTHORITY: 5 U.S.C. 301 and the Contract Disputes Act of 1978 (Pub. L. 95-563, Nov. 1, 1978 (41 U.S.C. 601-613)).

SOURCE: 46 FR 57499, Nov. 24, 1981, unless otherwise noted.

§ 4.100 General rules and guidelines.

(a) *Effective date and applicability*—(1) *Effective date and general applicability.* These rules shall be in effect on and after March 1, 1979, and except as qualified by the provisions of paragraphs (a)(2) and (3) of this section, shall apply to all appeals brought before the Interior Board of Contract Appeals.

(2) *Special applicability.* The rule set forth in § 4.102(a) provides for alternative applicability, depending upon whether the appeal involved is subject to the Contract Disputes Act of 1978, Public Law 95-563 (41 U.S.C. 601-613). The rules set forth in §§ 4.102 (c), (d), and (e), 4.113, and 4.120 shall apply exclusively to appeals which are subject to the Contract Disputes Act of 1978.

(3) *When an appeal is subject to the Contract Disputes Act of 1978.* An appeal shall be subject to the Contract Disputes Act of 1978 if it involves a contract entered into on or after March 1, 1979; or, at the election of the appellant, if the appeal involves a contract entered into before March 1, 1979, and the contracting officer's decision from which the appeal is taken is dated March 1, 1979, or thereafter.

(b) *Jurisdiction for considering appeals.* The Interior Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers relating to contracts made by (i) the Department of the Interior or (ii) any other executive agency when such agency or the Administrator of the Of-

fice of Federal Procurement Policy has duly designated the Board to decide the appeal.

(c) *Location and organization of the Board.* (1) The Board's address is 801 North Quincy Street, Arlington, Virginia 22203. Its telephone number is (703) 235-3813.

(2) The Board consists of a Chairman, Vice Chairman, and other members all of whom are attorneys at law duly licensed by a State, Commonwealth, Territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least two members who decide the cases. However, in cases of disagreement, or unusual circumstances, a panel of three members will be assigned to decide by a majority vote. Board members are designated Administrative Judges.

(d) *Time extensions and computations.* (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(e) *General guidelines*—(1) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings, and other communications shall be filed with the Board at the address indicated herein. Communications to the Board shall be addressed to Interior Board of Contract Appeals, 801 North Quincy Street, Arlington, Virginia 22203.

(2) *Representation of parties.* Whenever in these rules reference is made to contractor, appellant, contracting officer, respondent, or parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearances have been filed with the Board. In those cases where an executive agency, other than the Department of the Interior, has designated the Board to adjudicate its contract