(c) The appellant must have exhausted any preliminary appeal process required by regulation. For example, see 42 CFR part 50 (subpart D) for Public Health Service programs. In such cases, the *final written decision* required for the Board's review is the decision resulting from the preliminary review or appeal process. appendix A contains further details.

§ 16.4 Summary of procedures below.

The Board's basic process is review of a written record (which both parties are given ample opportunity to develop), consisting of relevant documents and statements submitted by both parties (see § 16.8). In addition, the Board may hold an informal conference (see § 16.10). The informal conference primarily involves questioning of the participants by a presiding Board member. Conferences may be conducted by telephone conference call. The written record review also may be supplemented by a hearing involving an opportunity for examining evidence and witnesses, cross-examination, and oral argument (see § 16.11). A hearing is more expensive and time-consuming than a determination on the written record alone or with an informal conference. Generally, therefore, the Board will schedule a hearing only if the Board determines that there are complex issues or material facts in dispute, or that the Board's review would otherwise be significantly enhanced by a hearing. Where the amount in dispute is $25,000 or less, there are special expedited procedures (see § 16.12 of this part). In all cases, the Board has the flexibility to modify procedures to ensure fairness, to avoid delay, and to accommodate the peculiar needs of a given case. The Board makes maximum feasible use of preliminary informal steps to refine issues and to encourage resolution by the parties. The Board also has the capability to provide mediation services (see § 16.18).

§ 16.5 How the Board operates.

(a) The Board's professional staff consists of a Chair (who is also a Board member) and full- and part-time Board members, all appointed by the Secretary; and a staff of employees and consultants who are attorneys or persons from other relevant disciplines, such as accounting.

(b) The Chair will assign a Board member to have lead responsibility for each case (the "presiding Board member"). The presiding Board member will conduct the conference or hearing, if one is held. Each decision of the Board is issued by the presiding Board member and two other Board members.

(c) The Board staff assists the presiding Board member, and may request information from the parties; conduct telephone conference calls to request information, to clarify issues, or to schedule events; and assist in developing decisions and other documents in a case.

(d) The Chair will assure that no Board or staff member will participate in a case where his or her impartiality could reasonably be questioned.

(e) The Board's powers and responsibilities are set forth in § 16.13.

§ 16.6 Who represents the parties.

The appellant's notice of appeal, or the first subsequent submission to the Board, should specify the name, address and telephone number of the appellant's representative. In its first submission to the Board and the appellant, the respondent (i.e., the federal party to the appeal) should specify the name, address and telephone number of the respondent's representative.

§ 16.7 The first steps in the appeal process: The notice of appeal and the Board's response.

(a) As explained in 45 CFR 74.304, a prospective appellant must submit a notice of appeal to the Board within 30 days after receiving the final decision. The notice of appeal must include a copy of the final decision, a statement of the amount in dispute in the appeal, and a brief statement of why the decision is wrong.

(b) Within ten days after receiving the notice of appeal, the Board will send an acknowledgment, enclose a copy of these procedures, and advise the appellant of the next steps. The Board will also send a copy of the notice of appeal, its attachments, and the