

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the amount of insurance per ton, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on October 21, 1996.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 96-27769 Filed 10-29-96; 8:45 am]

BILLING CODE 3410-FA-P

DEPARTMENT OF ENERGY

10 CFR Parts 703 and 1023

RIN 1901-AA30

Board of Contract Appeals; Contract Appeals

AGENCY: Board of Contract Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy is proposing to amend its regulations concerning proceedings and functions of the Board of Contract Appeals. This action is necessary to update the rules and to reorganize and supplement the existing rules to provide the public with a better understanding of the Board and its functions. The proposed rules would add an overview of the Board's organization, authorities, and various functions, enunciate longstanding policies favoring the use of Alternative Dispute Resolution (ADR) and confirm the Board's authority to engage in ADR and to provide an array of ADR neutral services, modify the Rules of Practice for Contract Disputes Act (CDA) appeals to implement changes made to the CDA by the Federal Acquisition Streamlining Act (FASA), and remove unnecessary and obsolete rules related to the Board's non-CDA appeals and Contract Adjustment Board functions.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Interested persons may submit written comments to: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, Room 1006, Webb Building, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, (703) 235-2700.

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

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F. Review under Executive Order 12612

III. Public Comments

I. Background

A. Discussion

This Rulemaking has several purposes. First, it would set out a statement of the organization, functions, and authorities of the Board of Contract Appeals (Board or EBCA) of the Department of Energy (DOE). The Board has functions other than the resolution of disputes brought under the Contract Disputes Act (CDA), yet the current rules do not list and describe these functions and their associated authorities in any single place. This has proven confusing to some who were unfamiliar with the Board. The proposed rules, in one place, describe and cross-reference all of the standing functions and rules of the Board. This proposed change should help those unfamiliar with the Board to understand its several functions and the limits of its authority, and to assist potential appellants to determine whether the Board is the proper forum for the resolution of a dispute. Moreover, the rule will provide, for informational purposes, the Board's delegated general authorities, which are set forth in a delegation order from the Secretary of Energy.

Second, this Rulemaking would enunciate the Board's and DOE's policy favoring the use of ADR. The current rules are outdated and neither recognize ADR nor summarize the Board and its members' authority to employ and participate in ADR procedures. The Board has a longstanding policy to encourage the consensual resolution of

disputes and, thus, decrease the instances where parties must resort to litigation. The proposed rules contain an explicit statement of the Board's and DOE's policy regarding ADR.

Third, the Federal Acquisition Streamlining Act (FASA) modified the CDA with respect to matters involving claim certification and availability of certain appeal procedures. This Rulemaking would update the Board's rules of procedure to implement these changes. The Streamlining Act increased the threshold for CDA claim certification to \$100,000, from \$50,000. The Act also increased the amounts under which a claim is eligible for either accelerated procedures or small claims procedures. Claims under \$100,000 (previously \$50,000) will be eligible for accelerated procedures and claims under \$50,000 (previously \$10,000) will be, at the contractor's election, resolved under the small claims procedures.

Fourth, this Rulemaking proposes to remove the rules of practice for contract and subcontract appeals which are not governed by the CDA (10 CFR Part 703) (non-CDA appeals) and the rules of the Contract Adjustment Board (10 CFR Part 1023, subpart B). No pre-CDA appeals have been filed with the Board for more than eight years and separate rules no longer appear to be necessary. The Board proposes that the existing rules of practice for CDA appeals, with modifications (such as disregarding inapplicable rules related solely to CDA claim certification) determined by the Board to be appropriate, be made applicable to both CDA appeals and non-CDA appeals from contracting officer decisions and to any subcontractor disputes over which the Board has jurisdiction. Regulatory authority for appeals to the Contract Adjustment Board no longer exists and the rules of the Contract Adjustment Board would be removed.

Finally, the proposed Rulemaking would renumber the rules of practice for contract appeals to the Board to allow for the inclusion of the Statement of Organization, Functions, and Authorities and minor conforming changes would be made to the Rules of Practice.

B. Section-By-Section Analysis

The following analysis provides additional explanatory information regarding the intended effect of these rules if adopted as proposed. The proposed rules add an Overview which consists of sections 1023.1-1023.9. This Overview would reorganize and supplement the information contained in the current sections 1023.2-1023.6.

Overview: Organization, Functions and Authorities

Section 1023.1 Introductory Material on the Board and Its Functions

This section is self-explanatory. It describes the various standing functions performed by the Board and cross-references authorities and rules codified in other parts of Title 10, Code of Federal Regulations.

Section 1023.2 Organization and Location of the Board

This section is self-explanatory. It states the current location of the Board. It also outlines the basic makeup of Board personnel.

Section 1023.3 Principles of General Applicability

Paragraph (a) emphasizes that the Board is a neutral adjudicatory body which is to hear and decide all cases independently, fairly, and impartially. It further states that decisions shall be based exclusively upon the record, and would expressly proscribe consideration of any matter which might come to the attention of the Board by any means other than those provided by the various rules of practice. Paragraph (a) also reiterates a longstanding position of the Department that Board decisions, pursuant to the Contract Disputes Act or pursuant to a delegation of authority (provided the delegation does not provide otherwise), constitute final agency decisions and are not subject to administrative review.

Paragraph (b) would confirm the authority of the Board and its members and personnel to perform ADR related functions. It would also require adherence to a standard of procedural fairness, integrity, and diligence in activities related to ADR. The paragraph would permit limited ex parte communications related to ADR procedures until the parties enter into an approved ADR agreement, at which point, all communications would be controlled by that agreement. The paragraph would emphasize the obligation of Board personnel to maintain the confidentiality of ADR matters.

Section 1023.4 Authorities

This section would set forth duties and authorities provided by the CDA or delegated to the Board by the Secretary of Energy.

Paragraph (a) is self-explanatory. However, it recognizes that parties may agree to employ alternative procedures for dispute resolution under the CDA.

Paragraph (b) sets forth the Board's general powers.

Paragraph (c) sets forth delegated authorities which are set forth in a delegation order. Among these duties is the duty to hear and decide non-CDA appeals as provided by the provisions of acquisition and other contracts of the Department or by the authorized provisions of subcontracts under DOE contracts. Authorized activities include the adjudication of facts related to proposed debarments when referred to the Board by the Deputy Assistant Secretary for Procurement and Assistance Management.

Section 1023.5 Duties and Responsibilities of the Chair

The position title "Chairman" would be changed to the gender-neutral "Chair." The duties and responsibilities of the Chair would be strengthened and expanded to enable the Chair to improve the efficiency and timeliness of Board proceedings. Additionally, the Chair would be granted new express authorities with respect to ADR, such as arranging third party neutral participation. To the extent the described authorities are authorities granted by statute to the Board, all members of the Board concur in their exercise by the Chair and have delegated their authority to the Chair.

Section 1023.6 Duties and Responsibilities of Board Members and Staff

Paragraph (a) would establish the supplemental conduct guidelines for Board judges and staff which are in addition to existing laws and rules of general and specific applicability.

Paragraph (b) would authorize any administrative judge or Board employee to perform any authorized ADR responsibility or function.

Paragraph (c) would make explicit existing policies regarding ex parte communications in all Board judicial functions. It would also establish a permanent bar against disclosing Board deliberations.

Section 1023.7 Board Decisions; Assignment of Judges

This section would retain the existing general rule that cases are decided by a majority vote of a panel of not less than three Administrative Judges (or Hearing Officers) and would provide Presiding Judges and Officers with broad authority to act for the Board on all but dispositive matters. However, in a change from the existing rule, it would no longer be necessary for all members of a panel to participate in a decision if a concurring majority exists. This paragraph contains additional provisions which would allow the

Board to respond to variable circumstances and requirements of the parties. It also would establish the Chair's authority to assign an additional judge to a panel in case of a tie vote.

Section 1023.8 Alternative Dispute Resolution (ADR)

This section would state that it is the policy of the DOE and the Board to encourage voluntary ADR proceedings, where appropriate, in an effort to resolve disputes in the most expeditious and inexpensive manner. Settlement discussions and mediation efforts have long been aspects of judicial decision-making. It is the Department's intention that alternative dispute resolution before the Board be recognized as a core judicial function of the Board. As such, Board personnel are involved in a judicial function and are entitled to judicial immunity as accorded by law.

Section 1023.9 General Guidelines

Paragraph (a) would carry forward the current Board authority to provide for circumstances not contemplated by the rules. It would also recognize that the Federal Rules of Civil Procedure may be looked to as a source of guidance, but that Board proceedings are required to be as informal, efficient and inexpensive as practicable, and thus the Board is not bound by them.

Paragraph (b) would provide explicit authority to a Presiding Judge or Hearing Officer to issue prehearing orders varying the procedures and limitations set forth in the various Rules of Practice and Rules of Procedure. This authority would explicitly authorize judges to tailor procedural schedules to the circumstances and requirements of individual cases.

Section 1023.20 Rules of Practice

This section would be redesignated as § 1023.120.

Subpart A—Rules of the Board of Contract Appeals

Section 1023.101 Scope and Purpose

This section would state the scope of the rules contained in Subpart A. It should be noted that this Rulemaking would rescind 10 CFR Part 703, which currently contains the rules of practice for pre-CDA contract appeals and certain subcontract appeals to the Board. This section would provide that the rules contained in this subpart would not only be applicable to CDA proceedings, but also to pre-CDA and other non-CDA contract appeals, as well as subcontractor appeals, with such modifications determined by the Board

to be appropriate to the nature of the dispute.

Section 1023.102 Effective Date

This section details the effective date of the rules and also the effective date of the modifications to the rules made in compliance with the Federal Acquisition Streamlining Act (FASA), Pub. L. 103-355 (1994).

Section 1023.120 Rules of Practice

This section is the existing section 1023.20. Modifications would be made to this section to reflect changes to the CDA made by FASA.

Rule 1 would be modified by substituting "\$100,000" wherever "\$50,000" is found. Rule 6 would be modified by substituting "\$100,000" for "\$50,000" and substituting "\$50,000" where "\$10,000" appears. Rule 13 would substitute "\$50,000" for "\$10,000" and Rule 14 would substitute "\$100,000" for "\$50,000."

Subpart B

All sections under this subpart would be removed and the subpart reserved for future use.

II. Procedural Requirements

A. Review under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4)

specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulation in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review under the Regulatory Flexibility Act

The proposed rules were reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. The DOE certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

D. Review under the Paperwork Reduction Act

The DOE has determined that the proposed rules are exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

E. Review under the National Environmental Policy Act

The DOE has concluded that promulgation of these rules would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), or the Council on Environmental Quality Regulations (40 CFR parts 1500-08), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environment assessment pursuant to NEPA.

F. Review under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that

regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

These proposed rules, when finalized, will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

III. Public Comments

Interested persons are invited to participate in this Rulemaking by submitting data, views, or arguments with respect to the proposed rules set forth in this notice. Comments should be submitted to the address for the DOE Board of Contract Appeals given at the beginning of this notice. All comments received on or before the date specified in the beginning of this notice, and all other relevant information, will be considered by the Board before taking final action on the proposed rules.

This notice of proposed Rulemaking does not involve any substantial issues of law or fact and the proposed rules should not have substantial impact on the nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to Pub. L. 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the DOE does not plan to hold a public hearing on these proposed rules.

List of Subjects in 10 CFR Parts 1023 and 703

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, D. C. on October 23, 1996.

E. Barclay Van Doren,
Chair, Department of Energy, Board of Contract Appeals.

For the reasons set forth in the Preamble, Parts 703 and 1023 of Title 10 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 703—CONTRACT APPEALS

1. Part 703 is removed.

PART 1023—CONTRACT APPEALS

2. The authority citation is revised to read as follows:

Authority: 42 U.S.C. §§ 2201, 5814, 7151, 7251; 5 U.S.C. § 301; 41 U.S.C. §§ 321, 322, 601–613; 5 U.S.C. §§ 571–583; 9 U.S.C. §§ 1–16.

3. Part 1023 is proposed to be amended by adding an Overview before subpart A consisting of sections 1023.1 through 1023.9:

PART 1023—CONTRACT APPEALS

Overview: Organization, Functions and Authorities

Sec.

§ 1023.1 Introductory Material on the Board and Its Functions.

§ 1023.2 Organization and Location of the Board.

§ 1023.3 Principles of General Applicability.

§ 1023.4 Authorities.

§ 1023.5 Duties and Responsibilities of the Chair.

§ 1023.6 Duties and Responsibilities of Board Members and Staff.

§ 1023.7 Board Decisions; Assignment of Judges.

§ 1023.8 Alternative Dispute Resolution (ADR).

§ 1023.9 General Guidelines.

§ 1023.1 Introductory material on the Board and its functions.

(a) The Energy Board of Contract Appeals ("EBCA" or "Board") functions as a separate quasi-judicial entity within the Department of Energy (DOE). The Secretary has delegated to the Board's Chair the appropriate authorities necessary for the Board to maintain its separate operations and decisional independence.

(b) The Board's primary function is to hear and decide appeals from final decisions of DOE contracting officers on claims pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601 *et seq.* The Board's Rules of Practice for these appeals are set forth in subpart A of this part. Rules relating to recovery of attorney fees and other expenses under the Equal Access to Justice Act are set forth in subpart C of this part.

(c) In addition to its functions under the CDA, the Secretary in Delegation Order 0204–162 has authorized the Board to:

(1) Adjudicate appeals from agency contracting officers' decisions not taken pursuant to the CDA (non-CDA disputes) under the Rules of Practice set forth in subpart A of this part;

(2) Perform other quasi-judicial functions that are consistent with the Board members' duties under the CDA as directed by the Secretary.

(3) Serve as the Energy Financial Assistance Appeals Board to hear and decide certain appeals by the Department's financial assistance recipients as provided in 10 CFR 600.22, under Rules of Procedure set forth in 10 CFR part 1024;

(4) Serve as the Energy Invention Licensing Appeals Board to hear and decide appeals from license terminations, denials of license applications and petitions by third-parties for license terminations, as provided in 10 CFR part 781, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate with advance notice to the parties; and

(5) Serve as the Energy Patent Compensation Board to hear and decide, as provided in 10 CFR part 780, certain applications and petitions filed under authority provided by the Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919 (1954), and the Invention Secrecy Act, 35 U.S.C. 181–188, including:

(i) Whether a patent is affected with the public interest;

(ii) Whether a license to a patent affected by the public interest should be granted and equitable terms therefor; and

(iii) Whether there should be allotment of royalties, award, or compensation to a party contributing to the making of certain categories of inventions or discoveries, or an owner of a patent within certain categories, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate, with advance notice to the parties.

(d) The Board provides alternative disputes resolution neutral services and facilities, as agreed between the parties and the Board, for:

(1) Disputes related to the Department's prime contracts and to financial assistance awards made by the Department.

(2) Disputes related to contracts between the Department's cost-reimbursement contractors, including Management and Operating Contractors (M&Os) and Environmental Remediation Contractors (ERMCs), and their subcontractors. Additionally, with the consent of both the responsible prime DOE cost-reimbursement contractor and the cognizant DOE contracting officer, the Board may provide neutral services and facilities for disputes under second tier subcontracts where the costs of litigating the dispute might be ultimately charged to the DOE as

allowable costs through the prime contract.

(3) Other matters involving DOE procurement and financial assistance, as appropriate.

§ 1023.2 Organization and location of the Board.

(a) The Board is located in the Washington, D.C. metropolitan area and its address is Energy Board of Contract Appeals, Room 1006, 4040 North Fairfax Drive, Arlington, Virginia, 22203. The Board's telephone numbers are (703) 235–2700 (voice) and (703) 235–3566 (facsimile).

(b) As required by the CDA, the Board consists of a Chair, a Vice Chair, and at least one other member. Members are designated Administrative Judges. The Chair is designated Chief Administrative Judge and the Vice Chair, Deputy Chief Administrative Judge.

§ 1023.3 Principles of general applicability.

(a) *Adjudicatory functions.* The following principles shall apply to all adjudicatory activities whether pursuant to the authority of the CDA, authority delegated under this part, or authority of other laws, rules, or directives.

(1) The Board shall hear and decide each case independently, fairly, and impartially.

(2) Decisions shall be based exclusively upon the record established in each case. Written or oral communication with the Board by or for one party is not permitted without participation or notice to other parties. Except as provided by law, no person or agency, directly or indirectly involved in a matter before the Board, may submit off the record to the Board or the Board's staff any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal, nor shall any member of the Board or of the Board's staff accept or consider ex parte communications from any person. This provision does not apply to consultation among Board members or staff or to other persons acting under authority expressly granted by the Board with notice to parties. Nor does it apply to communications concerning the Board's administrative functions or procedures, including ADR.

(3) Decisions of the Board shall be final agency decisions and shall not be subject to administrative appeal or administrative review.

(b) *Alternative Dispute Resolution (ADR) functions.* (1) Board judges and personnel shall perform ADR related functions impartially, with procedural fairness, and with integrity and diligence.

(2) Ex parte communications with Board staff and judges limited to the nature, procedures, and availability of ADR through the Board are permitted and encouraged. Once parties have agreed to engage in ADR and have entered into an ADR agreement accepted by the Board, ex parte communications by Board neutrals, support staff and parties shall be as specified by any applicable agreements or protocols and as is consistent with law, integrity, and fairness.

(3) Board-supplied neutrals and support personnel shall keep ADR matters confidential and comply with any confidentiality requirements of ADR agreements accepted by the Board. Board personnel may not disclose any confidential information unless permitted by the parties or required to do so by law.

§ 1023.4 Authorities.

(a) *Contract Disputes Act authorities.* The CDA imposes upon the Board the duty, and grants it the powers necessary, to hear and decide, or to otherwise resolve through agreed procedures, appeals from decisions made by agency contracting officers on contractor claims relating to contracts entered into by the DOE or relating to contracts of another agency, as provided in Section 8(d) of the CDA, 41 U.S.C. 607(d). The Board may issue rules of practice or procedure for proceedings pursuant to the CDA. The CDA also imposes upon the Board the duty, and grants it powers necessary, to act upon petitions for orders directing contracting officers to issue decisions on claims relating to such contracts. 41 U.S.C. 605(c)(4). The Board may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both. 41 U.S.C. 610.

(b) *General powers and authorities.* The Board's general powers include, but are not limited to, the powers to:

(1) Manage its cases and docket; issue procedural orders; conduct conferences and hearings; administer oaths; authorize and manage discovery, including depositions and the production of documents or other evidence; take official notice of facts within general knowledge; call witnesses on its own motion; engage experts; dismiss actions with or without prejudice; decide all questions of fact or law raised in an action; and make and publish rules of practice and procedure;

(2) Exercise, in proceedings to which it applies, all powers granted to arbitrators by the Federal Arbitration

Act, 9 U.S.C. 1–14, including the power to issue summonses.

(c) In addition to its authorities under the CDA, the Board has been delegated by Delegation Order 0204–162 issued by the Secretary of Energy, the following authorities:

(1) Issue rules, including rules of procedure, not inconsistent with this section and departmental regulations;

(2) Issue subpoenas under the authority of section 161(c) of the Atomic Energy Act of 1954, 42 U.S.C. 2201(c), as applicable;

(3) Such other authorities as the Secretary may delegate.

1023.5 Duties and responsibilities of the Chair.

The Chair shall be responsible for the following:

(a) The proper administration of the Board;

(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;

(c) Monitoring the progress of individual cases to promote their timely resolution;

(d) Appointment and supervision of a Recorder;

(e) Arranging for the services of masters, mediators, and other neutrals;

(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;

(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;

(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less than three members because of vacant positions, protracted absences, disabilities or disqualifications;

(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;

(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon

selection, be appointed to serve as provided in the CDA;

(k) Determining whether member duties are consistent with the CDA; and

(l) Reporting Board activities to the Secretary not less often than biennially.

§ 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board's functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in § 1023.3.

(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.

(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from ex parte disclosure of information concerning any Board deliberations.

§ 1023.7 Board decisions; Assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this part. This paragraph shall not preclude the Presiding Administrative Judge from taking dispositive actions as provided in this part or by agreement of the parties. Other persons acting as commissioners, magistrates, masters, or hearing officers shall have such powers as the Board shall delegate.

(b) Except as provided by law, rule, or agreement of the parties, contract appeals and other cases are assigned to a deciding panel established by the Board Chair consisting of two or more administrative judges.

(c) The concurring votes of a majority of a deciding panel shall be sufficient to decide an appeal. All members assigned to a panel shall vote unless unavailable. The Chair will assign an additional member if necessary to resolve tie votes.

§ 1023.8 Alternative Dispute Resolution (ADR).

(a) *Statement of policy.* It is the policy of the DOE and of the Board to facilitate consensual resolution of disputes and to employ ADR in all of the Board's functions when agreed to by the parties. ADR is a core judicial function performed by the Board and its judges.

(b) *ADR for docketed cases.* Pursuant to the agreement of the parties, the Board, in an exercise of discretion, may approve either the use of Board-annexed

ADR (ADR which is conducted under Board auspices and pursuant to Board order) or the suspension of the Board's procedural schedule to permit the parties to engage in ADR outside of the Board's purview. While any form of ADR may be employed, the forms of ADR commonly employed using Board judges as neutrals are: case evaluation by a settlement judge (with or without mediation by the judge); arbitration; mini-trial; summary (time and procedurally limited) trial with one-judge, summary binding (non-appealable) bench decision; and fact-finding.

(c) *ADR for non-docketed disputes.* As a general matter the earlier a dispute is identified and resolved, the less the financial and other costs incurred by the parties. When a contract is not yet complete there may be opportunities to eliminate tensions through ADR and to confine and resolve problems in a way that the remaining performance is eased and improved. For these reasons, the Board is available to provide a full range of ADR services and facilities before, as well as after, a case is filed with the Board. A contracting officer's decision is not a prerequisite for the Board to provide ADR services and such services may be furnished whenever they are warranted by the overall best interests of the parties. The forms of ADR most suitable for mid-performance disputes are often the non-dispositive forms such as mediation, facilitation and fact-finding, mini-trials, or non-binding arbitration, although binding arbitration is also available.

(d) *Availability of information on ADR.* Parties are encouraged to consult with the Board regarding the Board's ADR services at the earliest possible time. A handbook describing Board ADR is available from the Board upon request.

§ 1023.9 General guidelines.

(a) The principles of this Overview shall apply to all Board functions unless a specific provision of the relevant rules of practice applies. It is, however, impractical to articulate a rule to fit every circumstance. Accordingly, this part, and the other Board Rules referenced in it, will be interpreted and applied consistent with the Board's responsibility to provide just, expeditious, and inexpensive resolution of cases before it. When Board rules of procedure do not cover a specific situation, a party may contend that the Board should apply pertinent provisions from the Federal Rules of Civil Procedure. However, while the Board may refer to the Federal Rules of Civil Procedure for guidance, such Rules are

not binding on the Board absent a ruling or order to the contrary.

(b) The Board is responsible to the parties, the public, and the Secretary for the expeditious resolution of cases before it. Accordingly, subject to the objection of a party, the procedures and time limitations set forth in rules of procedure may be modified, consistent with law and fairness. Presiding judges and hearing officers may issue prehearing orders varying procedures and time limitations if they determine that purposes of the CDA or the interests of justice would be advanced thereby and provided both parties consent. Parties should not consume an entire period authorized for an action if the action can be sooner completed. Informal communication between parties is encouraged to reduce time periods whenever possible.

(c) The Board shall conduct proceedings in compliance with the security regulations and requirements of the Department or other agency involved.

3a. Subpart A is amended by removing §§ 1023.1 through 1023.6, redesignating § 1023.20 as 1023.120 and adding §§ 1023.101 and 1023.102, reading as follows:

§ 1023.101 Scope and purpose.

The rules of the Board of Contract Appeals are intended to govern all appeal procedures before the Department of Energy Board of Contract Appeals (Board) which are within the scope of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). Those rules, with modifications determined by the Board to be appropriate to the nature of the dispute, also apply to all other contract and subcontract related appeals which are properly before the Board.

§ 1023.102 Effective date.

The rules of the Board of Contract Appeals shall apply to all proceedings filed on or after [30 days after publication of the final rule], except that Rule 1(a) and (b) of § 1023.120 shall apply only to appeals filed on or after [the effective date of 48 CFR 33.211].

§ 1023.120 [Amended]

4. Newly designated section 1023.120 is amended by revising "\$50,000" to read "\$100,000" in the following paragraphs:

- Rule 1, paragraph (b)
- Rule 1, paragraph (c)
- Rule 6, paragraph (b)
- Rule 14, paragraph (a)

5. Newly designated section 1023.120 is amended by revising "\$10,000" to read "\$50,000" in the following paragraphs:

- Rule 6, paragraph (b)
- Rule 13, paragraph (a)

Subpart B—[Removed and Reserved]

6. Subpart B is removed and reserved.

§ 1023.327 [Amended]

7. Section 1023.327 of Subpart C is amended by revising "10 CFR 1023.20" to read "10 CFR 1023.120."

[FR Doc. 96-27683 Filed 10-29-96; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-SW-10-AD]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, 269C, 269D, and TH-55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, 269C, 269D, and TH-55A series helicopters. This proposal would require a visual inspection of the bond line between the main rotor blade (blade) abrasion strip (abrasion strip) and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the blade abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This proposal is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the blade abrasion strip attaches to the blade skin. The actions specified by the proposed AD are intended to prevent loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-SW-10-AD, 2601