

PROCEDURE FOR APPEALS AGAINST ADVERSE RULINGS OF REQUESTS FOR REGISTRATION AND ISSUANCE

EB 56: Brasilia, Brazil, 13-17 September 2010



I. Background



Background

- The procedure only deals with [appeals against adverse rulings](#) regarding request for registration or issuance (as requested by decision 2/CMP.5, paragraph 42 (b)).
- The procedure does not deal with appeals where a project participant alleges that the DOE may not have performed its duties adequately (as requested by decision 2/CMP.5, paragraph 42 (a)). This is being addressed through the revision to the accreditation procedure
- The EB requested a call for inputs at EB 53.
- The secretariat provided an information note and presentation on comments received at EB 54.
- The secretariat provided an Information note and presentation on key issues at EB 55.



II. Purpose and expectations



Expectations of the CDM Executive Board at EB 56

- Discuss the elements contained the procedure to implement the decisions of the CMP regarding appeals against adverse rulings.
- Adopt the procedure and request the endorsement of CMP at its 6th session.
- This would imply that the Board's report to CMP would contain a request that the CMP establish or appoint an appropriate Appeals Body to operationalize the procedure.



III. Brief overview of flow of procedure



Brief overview of the flow of the procedure

1. Appeal filed, and initial review of appeal by appeals body.
2. EB files response, and initial review of response by appeals body.
3. No motions shall be considered by appeals body.
4. Appeals body issues judgement (either affirming or remanding the EB ruling).
5. If remanded, then the EB reconsiders its ruling, taking into account the judgement of appeals body.

III. Elements of the Procedure

Key principles of the procedure

1. Stakeholders allowed to appeal.
2. Grounds for an appeal.
3. Appeals filing fee.
4. Initial review of appeal and EB's response by the appeals body.
5. Judgment of the appeals body and deference to the EB's ruling.
6. The contents of the "record" (e.g. the facts that may be taken into account).



1. Stakeholders allowed to appeal

- Project participants.
- Parties involved (through their DNAs).
- [DOEs].



2. Grounds for an appeal

Appellant may file an appeal based **only** on one or both of the following:

- (a) Factual grounds; and/or
- (b) Grounds of the interpretation or application of a CDM rule or requirement.

2.a. Factual grounds for an appeal

For an appeal based on factual grounds, **all of the following elements must be present and argued**:

- (a) The formal ruling contained a **clearly erroneous fact**, or set of facts;
- (b) The fact, or set of **facts, if corrected, would not have resulted in the rejection** or alteration of the request for registration or issuance;
- (c) **The fact, or set of facts, was sufficiently validated** or verified as part of the record of the request for registration or issuance.

2.b. Appeal based on the misinterpretation of a rule or requirement

For an appeal grounded on the interpretation or application of one or more CDM rules or requirements, **all of the following elements must be present and argued:**

- (a) The formal ruling contained an **unreasonable interpretation or application of one or more CDM rules or requirements**, in light of the text of CDM rules and requirements, and past judgements of the appeals body.
- (b) The CDM rules and requirements, **if correctly interpreted or applied, would not have resulted in the rejection** or alteration of the request for registration or issuance;

3. Appeals filing fee

- The appeals filing fee is USD 10,000.
- If the appeal results in a remand, then the filing fee would be returned.

4. Initial review by appeals body of appeal and EB's response

After the appeal is filed, the appeals body would conduct an initial review.

Similarly after the response is file, the appeals body would conduct an initial review.

- The purpose of the initial review would be to determine if the appeal and response comply with the requirements of the procedure.
- A such, the appeals body may:
 - (a) Dismiss the appeal or response;
 - (b) Order a clarification of the appeal or response. Such an order for clarification may require the submission of additional information.
 - (c) Find that the appeal or response substantially compiles with the requirements of the procedure, but nevertheless strike portions of the appeal or response from further consideration that do not comply with the requirements of this procedure (e.g. strike facts that are not referenced or that are not contained in the record).



5. Judgment of the appeals body and deference to the EB's ruling

1. The appeals body, in considering the ruling of the EB shall:
 - (a) **Defer** to the EB's findings of fact, **unless clearly erroneous**.
 - (b) **Defer** to the EB's interpretation of CDM rules and requirements, **unless they are unreasonable in light of the text of the rule or requirement** .

2. Judgement of the appeals body would either:
 - (a) **Affirm** the EB's ruling
 - (b) **Remand** the ruling to the EB for its reconsideration, taking into account the judgement of the appeals body.



6. The record

1. The formal ruling.
2. Validated or verified information submitted to the Executive Board as part of the current request for registration or issuance.
4. Information submitted to the Executive Board by **project participants** as part of the current request for registration or issuance under appeal that:
 - (a) **Has not been validated or verified**; and
 - (b) **Is unfavourable to the current request for issuance or registration** under appeal.
3. Information submitted to the Executive Board as part of a **previous request for registration or a previous request for issuance** that:
 - (a) Is **contrary or inconsistent with information contained in the current request for issuance** under appeal; and
 - (b) **Is unfavourable to the current request for issuance** under appeal.



End

Thank You.

