

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter VI—Business and Defense Services Administration, Department of Commerce

[BSDA Order M-43A; Revocation]

M-43A—CONSTRUCTION MACHIN- ERY: DISTRIBUTION

Revocation

BDSA Order M-43A (18 F.R. 2645) is hereby revoked. This revocation does not relieve any person of any obligation or liability incurred under M-43A, nor deprive any person of any rights received or accrued under said order prior to the effective date of this revocation.

(Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. 2154; sec. 1, Public Law 90-370, 82 Stat. 279)

This revocation shall take effect October 15, 1968.

**BUSINESS AND DEFENSE SERVICES
ADMINISTRATION,
RODNEY L. BORUM,
Administrator.**

[F.R. Doc. 68-12496; Filed, Oct. 14, 1968;
8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER C—AIDS TO NAVIGATION

[CGFR 68-95]

PART 67—PRIVATE AIDS TO NAVIGA- TION, OUTER CONTINENTAL SHELF AND WATERS UNDER THE JURIS- DICTION OF THE UNITED STATES

Miscellaneous Amendments

The general requirements in Part 67 describe the required private aids to navigation on structures on the Outer Continental Shelf and waters under the jurisdiction of the United States and these requirements currently apply in the 17th Coast Guard District, which includes Alaska. The rule designated 33 CFR 67.50-50 in this document states the requirements which are being applied in this Coast Guard District. The other changes in this document are miscellaneous amendments to bring the requirements up-to-date and to reflect the transfer of the Coast Guard to the Department of Transportation.

Because the regulations in this document are rules describing Coast Guard procedure with respect to applications for permits or are of an editorial nature, it is hereby found that the Coast Guard is exempt from compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements).

By virtue of the authority vested in me as Commandant, U.S. Coast Guard, by 14 U.S.C. 632 and other statutes cited with the regulations below and the delegation of authority in 49 CFR 1.4(a) (2) and (f), the following regulations are prescribed and shall be effective on and after the date of publication in the FEDERAL REGISTER.

1. The authority citation following the table of contents of Part 67 is amended to read as follows:

AUTHORITY: The provisions of this Part 67 issued under secs. 83, 85, 92, 633, 63 Stat. 500, 503, 545, sec. 4, 67 Stat. 462, sec. 6(b) (1), 80 Stat. 938; 14 U.S.C. 83, 85, 92, 633, 43 U.S.C. 1333, 49 U.S.C. 1655(b), 1657(e); 49 CFR 1.4(a) (2), (f), (g).

Subpart 67.01—General Requirements

2. Section 67.01-10(a) is amended to read as follows:

§ 67.01-10 Authority to regulate and delegation of functions.

(a) *Regulatory authority.* By virtue of the Department of Transportation Act (Public Law 89-670, 80 Stat. 931-950, 49 U.S.C. 1651-1659), establishing the Department of Transportation, the U.S. Coast Guard together with its functions and duties under the Secretary of the Treasury was transferred to the new department. The Secretary of Transportation thereby became the "head of the Department in which the Coast Guard is operating," including the authority to promulgate and enforce regulations under the Outer Continental Shelf Lands Act (43 U.S.C. 1333). By a rule in 49 CFR 1.9 the Secretary continued in effect actions taken prior to April 1, 1967. By rules in 49 CFR 1.4(a) (2) and (f) the Secretary of Transportation authorized the Commandant, U.S. Coast Guard, with respect to his own organization, to exercise the authority granted to the Secretary as Executive head of that department by any statute, Executive order or regulation. Section 1657(e) of Title 49 U.S.C. provides for delegation and redellegation of powers and functions vested in the Secretary. By a rule in 49 CFR 1.4(g) the Commandant is authorized to redelagate and authorize successive redelegations within the organization under his jurisdiction.

Subpart 67.10—General Require- ments for Fog Signals

§ 67.10-1 [Amended]

3. In § 67.10-1(b) the words "Regulations for Preventing Collisions at Sea,

1948," are amended to read, "Regulations for Preventing Collisions at Sea, 1960" (33 U.S.C. 1061-1094),".

§ 67.10-5 [Amended]

4. In § 67.10-5 the words "Regulations for Preventing Collisions at Sea, 1948," are amended to read, "Regulations for Preventing Collisions at Sea, 1960" (33 U.S.C. 1061-1094),".

§ 67.15-1 [Amended]

5. In § 67.15-1 the words "Regulations for Preventing Collisions at Sea, 1948," are amended to read, "Regulations for Preventing Collisions at Sea, 1960" (33 U.S.C. 1061-1094),".

Subpart 67.30—Class "C" Requirements

§ 67.30-5 [Amended]

6. The last sentence of § 67.30-5(a) is amended to read, "A copy of the specification may be obtained from the Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120".

Subpart 67.50—District Regulations

§ 67.50-25 [Amended]

7. In § 67.50-25(e) the words "New Orleans 16, Louisiana," are amended to read "New Orleans, Louisiana 70130,".

8. Subpart 67.50 is amended by adding a new § 67.50-50 reading as follows:

§ 67.50-50 Seventeenth Coast Guard District.

(a) *Description.* See § 3.85-1 of this chapter.

(b) *Line of demarcation.* There is no line of demarcation prescribed for this District. When required it will be determined in accordance with § 67.01-20. The District Commander shall assign structures to classes as he deems appropriate at the time of application for a permit to establish and operate lights and fog signals. In so doing, he shall take into consideration matters concerning, but not necessarily limited to, the dimensions of the structure and the depth of water in which it is located; the proximity of the structure to vessel routes; the nature and amount of vessel traffic; and the effect of background lighting.

Dated: October 7, 1968.

**W. J. SMITH,
Admiral, U.S. Coast Guard,
Commandant.**

[F.R. Doc. 68-12458; Filed, Oct. 14, 1968;
8:45 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

ANNUAL INCOME; RELOCATION PAYMENTS

In § 3.261(a), subparagraph (32) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

(a) Income:

	Dependency (parents)	Dependency and Indemnity compensation (parents)	Pension; protected veterans, (widows and children)	Pension; Public Law 86-211 (veterans, widows, and children)	See—
(32) Relocation payments (Public Law 90-448; Public Law 90-495).	Excluded.....	Excluded.....	Excluded.....	Excluded.....	§ 3.262(c).

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective the date of approval.

Approved: October 9, 1968.

By direction of the Administrator.

[SEAL]

A. W. STRATTON,
Deputy Administrator.

[F.R. Doc. 68-12494; Filed, Oct. 14, 1968; 8:48 a.m.]

PART 3—ADJUDICATION

Subpart A—Pension, Compensation,
and Dependency and Indemnity
Compensation

PROTECTION—SERVICE CONNECTION

Section 3.957 is revised to read as follows:

§ 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38, United States Code, which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Veterans Administration finding of service connection to the effective date of the rating decision severing service connection, after compliance with § 3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation. (38 U.S.C. 359)

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective the date of approval.

Approved: October 8, 1968.

By direction of the Administrator.

[SEAL]

A. W. STRATTON,
Deputy Administrator.

[F.R. Doc. 68-12493; Filed, Oct. 14, 1968; 8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

SUBCHAPTER N—PROCEDURES

PART 955—RULES OF PRACTICE
BEFORE THE BOARD OF CONTRACT
APPEALS

The rules of practice respecting proceedings of the Post Office Department's

Board of Contract Appeals have been revised. Accordingly, Part 955 is amended to read as follows:

Sec.
955.1 Authority, membership, and jurisdiction of the Board.

PRELIMINARY PROCEDURES

- 955.2 Appeals, how taken.
955.3 Contents of notice of appeal.
955.4 Forwarding of appeals.
955.5 Duties of the Contracting Officer and of Department Counsel.
955.6 Dismissal for lack of jurisdiction.
955.7 Pleadings.
955.8 Amendments of pleadings or record.
955.9 Elections as to hearings.
955.10 Prehearing briefs.
955.11 Prehearing or presubmission conference.
955.12 Submission without a hearing.
955.13 Optional accelerated procedure.
955.14 Settling of the record.
955.15 Depositions.
955.16 Inspection of documents and admission of facts.
955.17 Service of papers.

HEARINGS

- 955.18 Where held.
955.19 Notice of hearings.
955.20 Unexcused absence of a party.
955.21 Nature of hearings.
955.22 Examination of witnesses.
955.23 Copies of papers.
955.24 Posthearing briefs.
955.25 Transcript of proceedings.
955.26 Withdrawal of exhibits.
955.27 The appellant.
955.28 The respondent.
955.29 Settlement.

DECISIONS

- 955.30 Service and availability of Board decisions.
955.31 Dismissal without prejudice.
955.32 Remands from courts.
955.33 Effective date and applicability.

AUTHORITY: The provisions of this Part 955 issued under 5 U.S.C. 301, 39 U.S.C. 501; 39 CFR 821.3(c) (3).

§ 955.1 Authority, membership, and jurisdiction of the Board.

(a) The Board of Contract Appeals is the authorized representative of the Postmaster General to hear and decide appeals from decisions of contracting offi-

cers when and to the extent such appeals are expressly authorized by the terms of any contract to which the United States is a party. The chairman of the Board of Contract Appeals is authorized to promulgate rules of procedure for the Board of Contract Appeals. These duties shall be performed by the members of the Board of Contract Appeals in addition to their other duties in the Department.

(b) The Board of Contract Appeals for the Department generally consists of three members. The Board is composed of the Judicial Officer, as Chairman, the Chief Hearing Examiner and one other Hearing Examiner designated by the Chairman.

(c) The Board has the authority to conduct hearings, dismiss proceedings, take official notice of appropriate facts and decide all questions of fact and law raised by the appeal. There is no further administrative appeal from the decision of the Board. The Chairman of the Board may assign or reassign an appeal to one or more members for all purposes, except that any final decision must be by a majority of the Board. References hereinafter to the Board, except with respect to Board decisions, shall be understood to refer to the presiding member or members where such assignment has been made.

(d) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(e) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination or appeals without unnecessary delay.

(f) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(g) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(h) Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

PRELIMINARY PROCEDURES

§ 955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with three

copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within 30 days of the receipt of such decision unless otherwise provided in the contract.

§ 955.3 Contents of notice of appeal.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the Post Office Department bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an authorized officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

§ 955.5 Duties of the contracting officer and of Department Counsel.

(a) Fifteen days after receipt of a notice of appeal the contracting officer shall compile and transmit to the Department Counsel copies of all documents pertinent to the appeal, including the following:

(1) The findings of fact and the decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract, and pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data pertinent to the appeal;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board.

(5) Such additional information as may be considered material.

(b) Upon receipt of the foregoing compilation, Department Counsel shall prepare therefrom an appeal file, shall notify the appellant, provide him with a reasonably descriptive index or listing of its contents, and advise him that he may examine the appeal file at the office of Department Counsel for the purpose of satisfying himself as to the contents,

and furnishing or suggesting any additional documentation deemed pertinent to the appeal.

(c) Documents contained in the appeal file are considered, without further action by the parties, as before the Board as though they had been received in evidence at a formal hearing, unless a party files a written objection to the consideration of a particular document. Such written objection shall be filed in advance of settling the record if there is no hearing on the appeal or, if there is a hearing, then by written or oral objection as soon as practicable and, in any event, before the end of such hearing. If objection to a document is made, the Board will treat the document as having been offered in evidence and rule on its admissibility in accordance with § 955.21.

§ 955.6 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 955.7 Pleadings.

(a) Within 30 days after receipt by the Board of the notice of appeal, the appellant shall file with the Board an original and three copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Recorder of the Board (Docket Clerk) shall serve a copy upon the respondent. Should the complaint not be received within 30 days, the Board may, if it finds that the notice of appeal sufficiently defines the issues before the Board, treat the notice of appeal as a complaint. In such case the Board shall notify both parties of its decision.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and three copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion,

enter a general denial on behalf of the Government, and the appellant shall be so notified. The appeal file shall be filed with the answer.

(c) The Board may consider any timely motion:

(1) To dismiss an appeal for want of jurisdiction;

(2) To dismiss for failure to prosecute an appeal;

(3) To make a pleading more definite and certain;

(4) For discovery, interrogatories to a party, or the taking of depositions;

(5) To reconsider a decision or reopen a hearing;

(6) For any other appropriate order or relief.

Response, if any, by the opposite party to a motion shall be made within 10 days of his receipt of a copy thereof, unless the Board otherwise directs. The Board may permit oral hearing or argument and briefs in support of any motion.

§ 955.8 Amendments of pleadings or record.

(a) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 955.5, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the § 955.5 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 955.9 Elections as to hearings.

Within 15 days after the parties' receipt of notification from the Recorder of the Board that the Government's answer has been filed or the entrance of a general denial by the Board on behalf of the Government, they shall notify the Board whether they desire an oral hearing on the appeal. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. (See § 955.14) A party failing to elect an oral hearing within the 15 day time limitation may be deemed to have submitted its case on the record.

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may in its discretion require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a pre-hearing brief is submitted, it shall be furnished so as to be received by the Board at least 5 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 955.11 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.26, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member of the Board for a conference to consider:

- (1) The simplification or clarification of the issues;
- (2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
- (3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (4) The possibility of agreement disposing of all or any of the issues in dispute;
- (5) Such other matters as may aid in the disposition of the appeal.

(b) The results of the conference shall be reduced to writing by the Board member within 5 business days after the close of the conference, and this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to § 955.14. In the event of such election to submit, the submission may be supplemented by oral argument and by briefs, arranged in accordance with §§ 955.14 and 955.24.

§ 955.13 Optional accelerated procedure.

The parties may elect to process any appeal under this section, except that the Board's consent thereto shall also be required in any appeal exceeding \$2,500 in amount. In the event of such election, the Board will decide the appeal under an accelerated procedure, pursuant to which the decision will be based upon the pleadings, or other written statements in lieu of pleadings, and on such other evidence and argument as the Board may require.

§ 955.14 Settling of the record.

(a) A case submitted on the record pursuant to § 955.12 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted. At any time prior to the date that a case is ready for decision, either party, upon notice to the other, may supplement the record with documents and exhibits deemed relevant and material by the Board. The Board upon its own initiative may call upon either party, with appropriate notice to the other, for evidence deemed by it to be relevant and material. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. Either party may at any stage of the proceeding, within the discretion of the Board, on notice to the other party, raise objection to material in the record or offered into the record, on the grounds of relevancy and materiality.

(b) The Board record shall consist of documentation described in § 955.5, and any additional material, pleadings, prehearing briefs, record of prehearing or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhibits, and post-hearing briefs, as may thereafter be developed pursuant to these rules.

(c) This record will at all times be available for inspection by the parties at the office of the Board. In the interest of convenience, prior arrangements for inspection of the file should be made with the Recorder of the Board. Copies of material in the record may, if practicable, be furnished to appellant at the cost of reproduction.

§ 955.15 Depositions.

(a) *By whom and before whom to be taken.* Depositions upon oral examination or upon written interrogatories may be taken by either party and used as evidence at the hearing when relevant and material to the case. Depositions may be taken before any person authorized by laws of the United States or by the laws of the place where they are taken to administer oaths.

(b) *Procedure for taking.* Either party may take a deposition of a witness by giving the opposite party at least 10 days notice in writing of the time and place where such deposition will be taken. The notice shall contain: The name, address and official title of the officer before whom it is proposed to take the deposition; the name of the witness and the address; whether the deposition will be taken on oral examination or written interrogatories. The parties may stipulate in writing the requirements of the notice in which case the notice can be dispensed with. If the deposition is to be taken on written interrogatories, two copies thereof should accompany the notice or stipulation. The opposing party may serve cross interrogatories to be propounded to the witness within 10 days after receipt of the interrogatories, by forwarding them to the officer designated to take

the deposition and simultaneously forwarding a copy to his opponent. Disputes in regard to the taking of depositions may be submitted to the Board for resolution.

(c) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instance, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases otherwise heard on the record, the Board may, on motion of either party and in its discretion, receive depositions as evidence in supplementation of that record.

(d) *Expenses.* All expenses of taking the deposition of any person shall be borne by the party taking that deposition, except that the other party shall be entitled to copies of the transcript of the deposition only upon paying therefor.

§ 955.16 Inspection of documents and admission of facts.

For good cause shown, the Board may require a party to produce and permit inspection and copying or photographing of designated documents relevant to the appeal, or permit the serving on the opposing party of a request for admission of facts. Such Board action will be taken and orders entered as are consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay.

§ 955.17 Service of papers.

(a) Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, or certified, postage prepaid, addressed to the party upon whom service shall be made and the date of delivery as shown by return receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof or on a separate paper, signed by the parties and filed with the Board.

(b) Any papers filed with the Board, with the exception of exhibits received in a hearing, shall be filed in quadruplicate, unless the Board shall otherwise direct.

HEARINGS**§ 955.18 Where held.**

Hearing will ordinarily be held in Washington, D.C., except that upon request seasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location.

§ 955.19 Notice of hearings.

The parties shall be given at least 10 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

A party failing to acknowledge a notice of hearing shall be deemed to have consented to the indicated time and place of hearing.

§ 955.20 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 955.12. The Board shall notify the absent party of the proceedings had and shall advise him that he has 5 days from the receipt of such notification within which to show cause why the appeal should not be decided on the record made.

§ 955.21 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject however, to the sound discretion of the Board in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the Board. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of title 18, United States Code, §§ 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 955.23 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the Board at the conclusion of the hearing.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

§ 955.26 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

§ 955.27 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed and in good standing in any State, Commonwealth, Territory, or in the District of Columbia, pursuant to the Rules Governing the Eligibility of Persons to Practice Before the Post Office Department (§ 951.1 of this chapter, et seq.).

§ 955.28 The respondent.

Department counsel designated by the General Counsel will represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time.

§ 955.29 Settlement.

Whenever at any time it appears that appellant and Department counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however*, That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar.

DECISIONS

§ 955.30 Service and availability of Board decisions.

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions, except those to which the provisions of section

552 of Title 5, United States Code (sec. 3 of the Administrative Procedure Act, as amended), do not apply, shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made upon the record as described in § 955.14.

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed.

§ 955.32 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, the parties shall, within 20 days of such remand, submit a report to the Board indicating what procedures they think necessary to comply with the court's order. The Board will enter special orders governing the handling of matters remanded to it for further proceedings by any court. To the extent the court's directive and time limitations will permit, these orders will conform to these rules.

§ 955.33 Effective date and applicability.

These revised rules shall take effect 60 days following publication in the *FEDERAL REGISTER*. Except as otherwise directed by the Board and agreed to by the parties, these rules shall not apply to appeals which have been docketed prior to their effective date.

TIMOTHY J. MAY,
General Counsel.

[F.R. Doc. 68-12456; Filed, Oct. 14, 1968;
8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-1—GENERAL

Subpart 9-1.4—Procurement Authority and Responsibility

Subpart 9-1.50—Change Orders, Equitable Adjustments, and Supplemental Agreements for Fixed-Price Contracts

PART 9-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 9-5.52—Procurement of Special Items

MISCELLANEOUS AMENDMENTS

The following amendments to AEC Procurement Regulations Parts 9-1 and