

18. By amending § 97.31 of Subpart C to amend precision approach radar (PAR) and airport surveillance radar (ASR) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE RADAR

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure authorized for such airport by the Administrator. Initial approach minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at Pilot's discretion if it appears desirable to discontinue the approach. Except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes (sectors and distances measured from radar antenna)										Notes
From—	To—	Distance	Altitude	Distance	Altitude	Distance	Altitude	Distance	Altitude	
350°	030°	40	2400	Descend aircraft after passing FAF. 1. Runway 36—FAF 5 miles from threshold. TDZ elevation, 850'. 2. Runway 18—FAF 5 miles from threshold. TDZ elevation, 873'. 3. Runway 9R—FAF 5 miles from threshold. TDZ elevation, 871'. 4. Runway 27L—FAF 5 miles from threshold. Minimum altitude over 2.2-mile fix, 1520'. TDZ elevation, 875'.
030°	215°	40	2500	.....	.....	.....	.....	.....	.....
215°	250°	40	2400	.....	.....	.....	.....	.....	.....
250°	350°	40	2600	.....	.....	.....	.....	.....	.....
000°	300°	60	3000	.....	.....	.....	.....	.....	.....
000°	360°	10	2000	.....	.....	.....	.....	.....	.....

and including the area 4 miles E and 7 miles W of Runways 18-36 centerline extended 16 miles to the N; and the area 4 miles W and 7 miles E of Runways 18-36 centerline extended 16 miles to the S. Minimum altitude, 2000'.

Radar will provide 1000' vertical clearance within 3-mile radius of towers 1746' and 1749', 7 to 9 miles ENE; 1550', 24 miles NE; 1200', 2.5 miles; 1130', 9 miles E; 1120', 12 miles NW; water tank 1083', 4 miles SSE.

Missed approach: Runways 9R, 18, and 27L: Climb to 2000' and proceed S to Union Int. Hold S, 1 minute, right turns, 360° Inbound.
Runway 36: Climb to 2000' direct Addyston LOM. Hold N, 1 minute, right turns, 180° Inbound.

*Inoperative components table does not apply to AL's for Categories A, B, and C aircraft. One-mile visibility required when AL's inoperative.
#RVR 18' authorized Runways 18 and 36 for Categories A, B, and C.
#RVR 20' authorized Runways 18 and 36 for Category D.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-36.....	1200	RVR 24	410	1200	RVR 24	410	1200	RVR 24	410	1200	RVR 50	410
S-18*	1300	RVR 40	427	1300	RVR 40	427	1300	RVR 40	427	1300	RVR 50	427
S-9R.....	1300	3/4	429	1300	3/4	429	1300	3/4	429	1300	1	429
S-27L.....	1200	3/4	385	1200	3/4	385	1200	3/4	385	1200	1	385
C.....	1300	1	410	1340	1	450	1340	1 1/2	450	1500	2	670
A.....	Standard.			T 2-eng. or less—Standard.#			T over 2-eng.—Standard.#					

City, Covington; State, Ky.; Airport name, Greater Cincinnati; Elev., 800'; Facility, Cincinnati ASR; Procedure No. Radar-1, Amdt. 11; Eff. date, 15 May 69; Sup Amdt: No. 10; Dated, 13 Mar. 69

These procedures shall become effective on the dates specified therein.
(Secs. 307(c), 313(a), 601, Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1421; 72 Stat. 749, 752, 775)
Issued in Washington, D.C.; on April 8, 1969.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[F.R. Doc. 69-4357; Filed, Apr. 24, 1969; 8:45 a.m.]

Title 19—CUSTOMS DUTIES
Chapter I—Bureau of Customs,
Department of the Treasury
[T.D. 69-108]

PART 1—GENERAL PROVISIONS
Ports of Entry; Tulsa, Okla.

APRIL 17, 1969.

Notice that it was proposed to designate Tulsa, Okla., as a port of entry in the customs district of Houston, Tex. (Region VI), was published in the FEDERAL REGISTER on February 18, 1969 (34 F.R. 2311). The proposal was based upon a need to provide better customs service in the Houston, Tex., customs district. No objections to the proposal were received.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623 (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President in Executive Order No. 10289, September 17, 1951 (3 CFR, Ch. II), and pursuant to authorization provided by Treasury Department Order No. 190, Rev. 6 (34 F.R. 6298), Tulsa, Okla., is hereby designated a port of entry in the Houston, Tex., customs district (Region VI), effective as of May 15, 1969.

The area of the port of Tulsa, Okla., is described as follows:

All of the area lying within the outer boundaries of the city of Tulsa, Okla., in-

cluding any independent cities, towns, political subdivisions or unincorporated areas, lying within the said boundaries.

To reflect this change, § 1.2(c) of the Customs Regulations is amended by inserting in the column headed "Ports of Entry" in the Houston, Texas, customs district (Region VI), in proper alphabetical order "Tulsa, Oklahoma (T.D. 69-108)."

(80 Stat. 379, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended, R.S. 251, sec. 624, 40 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 1, 2, 66, 1624)

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 69-4968; Filed, Apr. 24, 1969; 8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers,
Department of the Army

PART 207—NAVIGATION REGULATIONS

Key West Harbor, Fla.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.173a establishing and governing the use of a restricted area in Key West Harbor, Fla., is hereby amended in its entirety, effective 30 days after publication in the FEDERAL REGISTER as follows:

§ 207.173a Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted area.

(a) *The areas.* (1) All waters within 100 yards of the U.S. Naval Station beginning at a point 100 yards due south of the south end of Whitehead Street at latitude 24°32'42.3" N., longitude 81°47'51" W., and extending westerly and northerly around the U.S. Naval Station to latitude 24°33'33" N., longitude 81°48'32.7" W.; and thence to the shore at latitude 24°33'32" N., longitude 81°48'29.5" W., the north end of the U.S. Coast Guard Base.

(2) All waters within 100 yards of the U.S. Naval Station Annex and the U.S. Naval Air Station Annex beginning at the shore at latitude 24°33'47.6" N., longitude 81°47'55.6" W.; thence westerly to latitude 24°33'48" N., longitude 81°48'00.9" W.; thence southerly to latitude 24°33'45.8" N., longitude 81°48'01" W.; thence westerly to latitude 24°33'47" N., longitude 81°48'12" W.; thence northerly to latitude 24°34'06.3" N., longitude 81°48'10" W.; and thence to latitude 24°33'57.6" N., longitude 81°47'20" W., 100 yards offshore of beacon No. 18.

(3) All waters within 100 yards of Fleming Key and within 100 yards of the fence across Fleming Key Cove.

(b) *The regulations.* (1) Entering or crossing any of the restricted areas described in paragraph (a) of this section is prohibited except as follows: Privately owned vessels properly registered and bearing identification in accordance with Federal and/or State laws and regulations, and at night showing lights required by Federal laws and U.S. Coast Guard regulations or, if no constant lights are required, then a bright white light showing all around the horizon, may transit the following portion of the restricted areas:

(i) The channel about 75 yards in width extending from the northwest corner of the U.S. Naval Station Annex eastward beneath the Fleming Key bridge along the north shore of the U.S. Naval Station Annex and the U.S. Naval Air Station Annex.

(ii) A channel 150 feet in width which will extend easterly from the main ship channel into Key West Bight, the north-

erly edge of which channel passes 25 feet south of the Navy Annex piers on the north side of the Bight. While legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited from mooring, anchoring, or fishing within 50 feet of any U.S. Navy owned pier or craft.

(2) Stopping or landing by other than government owned vessels and certain specifically authorized private craft in any of the restricted areas described in paragraph (a) of this section is prohibited.

(3) Vessels using the restricted channel areas described in subparagraph (1) (i) and (ii) of this paragraph shall proceed at speeds commensurate with minimum wake.

(4) The regulations in this section shall be enforced by the Commander, U.S. Naval Base, Key West, Fla., and such agencies as he may designate.

[Regs., Apr. 7, 1969, ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

HAROLD SHARON,
Chief, Legislative and Precedent
Branch, Management Division,
TAGO.

[F.R. Doc. 69-4948; Filed, Apr. 24, 1969; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

PART 4—BOARD OF CONTRACT APPEALS

On page 5173 of the FEDERAL REGISTER of March 13, 1969 (34 F.R. 5173), there was published, pursuant to the authority vested in the Secretary in 5 U.S.C. 22, a notice of proposed rule making under which the existing rules of the Interior Board of Contract Appeals would be revoked in their entirety, and new regulations relating to the authority of said Board, and its procedural rules, membership and decision making would be substituted. A 15-day period was allowed for the submission by interested persons of comments, suggestions, or objections relating to the new regulations.

Many suggestions and recommendations have been received. They have come from attorneys in private practice and from attorneys who represent the Government. Most of the suggestions have merit, but if they were all to be adopted, one of the primary purposes of the adoption of new rules—bringing the Interior Board's procedures into essential uniformity with those of the other major boards—would not be realized. However, some of the suggestions have been adopted. The principal revisions in the rules as previously published are:

1. The time allowed in § 4.3 for the transmittal of a notice of appeal by the contracting officer to the Board has been reduced from 10 days to 5 days. The

period specified in § 4.4 for completion and transmittal of the appeal file has been increased from 30 to 35 days. This change was made to afford a longer period for consultation between the contracting officer and the Department counsel who is designated after the notice of appeal is forwarded by the contracting officer.

2. A specific reference to the fact that inspection of an appeal file by the appellant may take place at a Departmental office other than the Board's office or that of the contracting officer, has been added to § 4.4. This is to encourage continuation of the present practice under which appeal files are sent for inspection to suitable Department of the Interior offices convenient to a contractor's headquarters, or to his attorney's office.

3. A statement has been added to § 4.6 that letter size paper should be used for the documents filed with the Board. This was suggested by the private bar. Most of the Department counsel have been filing their documents on letter size paper for some time.

4. Due to objections received from private practitioners and from Government lawyers, the requirement of § 4.16 for certification or registration of mail has been removed. The Board will retain its present practice of determining the date of service of a paper by looking to the date it was deposited in the mails. Specific authority for the use of certificates of mailing by attorneys has been added.

5. The substance of the Department of Agriculture's Board of Contract Appeals rule concerning sanctions for failure of a party to produce documents or other material in accordance with a Board request, or to make available an officer, director, official, or employee for oral examination or to answer written interrogatories, has been added to the new Interior rules (§ 4.31). This was at the suggestion of an attorney in private practice.

Other revisions of an editorial or clarifying nature have been made. The regulations are hereby adopted as set forth below.

Effective date. The new regulations shall be effective as provided in § 4.34, set forth below.

WALTER J. HICKEL,
Secretary of the Interior.

APRIL 21, 1969.

Sec. 4.0 Authority; guidelines; membership; decisions.

RULES

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Appendix I—Notice of Appeal

Authority: The provisions of this Part 4 issued under 5 U.S.C. 22.

§ 4.0 Authority; guidelines; membership; decisions.

(a) The Board of Contract Appeals is the authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary:

(1) Appeals by contractors from decisions of contracting officers of any bureau or office of the Department of the Interior, on their authorized representatives or other authorities, on disputed questions, taken pursuant to the provision of contracts requiring the determination of such appeals by the head of the agency or his duly authorized representative or board. The Board's authority, however, does not include the Secretary's special power granted by 16 U.S.C. section 832a(f) (1964) to modify, adjust, or cancel contracts, or to compromise or finally settle claims arising thereunder, upon such terms and conditions and in such manner as the Secretary (or his delegatee, the Bonneville Power Administrator) may deem necessary.

(b) 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.

(c) Emphasis is placed upon the sound administration of the rules in this part in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules in this part will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay. Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. 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.

Where it has authority to extend time limitations, the Board may extend them in appropriate circumstances, on good cause shown. 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.

(d) The Board of Contract Appeals (hereinafter referred to as the Board) consists of regular members named by the Secretary of the Interior (one of those members is designated as Chairman by the Secretary), and alternate members who may be named by the Secretary to serve, when necessary, in place of or in addition to regular members.

(e) The Chairman of the Board may direct that an appeal may be decided by a panel of any two members of the Board, but if they are unable to agree upon a decision, the Chairman may assign one or more additional members to consider the appeal. When an appeal is considered by three or more members of the Board, the concurrence of a majority shall be sufficient for a decision.

RULES

PRELIMINARY PROCEDURES

§ 4.1 Appeals, how taken.

Notice of an appeal must be in writing (a suggested form of notice appears herein following § 4.34). The original, together with two 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 the time specified therefor in the contract.

§ 4.2 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 Department's bureau or office 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 § 4.6 (Rule 6) may be filed with the notice of appeal, or the contractor may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 4.3 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 the date of receipt, if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the Board by certified mail. At the same time, he shall notify the Department's Office of the Solicitor, in accordance with instructions of the Solicitor, that the appeal has been received in order that a Department counsel may be appointed. Following receipt by the Board of the original notice of an appeal (whether through the contracting

officer or otherwise), the contractor will be promptly advised of its receipt and docketing, and furnished a copy of the rules in this part. In the event the Board receives a notice of appeal which was not filed with the contracting officer, a copy shall be promptly transmitted to the latter by the Board.

§ 4.4 Duties of the contracting officer—appeal file.

Following receipt of a notice of appeal, or advice that an appeal has been filed, the contracting officer shall promptly, and in any event within 35 days, compile and transmit to the Board the appeal file (copies of all documents pertinent to the appeal). A duplicate appeal file shall be forwarded to the Department counsel. The appeal file shall include the following:

(a) 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;

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

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

(d) 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;

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

At the time of transmittal of the appeal file to the Board, the contracting officer shall notify the appellant, provide him with a listing of its contents, and afford him an opportunity to examine the same at the office of the contracting officer, at the office of the Board, or at a suitable alternative departmental office, for the purpose of satisfying himself as to the contents, and furnishing or suggesting any additional documentation deemed pertinent to the appeal. With his transmittal to the Board, the contracting officer shall certify that the appellant has been provided with the above-described listing.

§ 4.5 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.

§ 4.6 Pleadings.

(a) Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy 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. Letter size paper should be used for the complaint and for all other papers filed with the Board. A copy of the complaint will be served by the appellant upon the Department counsel, or if the latter's identity and address are not yet known, upon the Solicitor, U.S. Department of the Interior, C between 18th and 19th Streets NW., Washington, D.C. 20240, service to be in accordance with § 4.16 (Rule 16). Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the Department counsel shall be so notified.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government'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. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.16 (Rule 16). 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.

§ 4.7 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 appeal file described in § 4.4 (Rule 4) 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 said appeal file (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.

§ 4.8 Hearing—election.

Within 15 days after the Government's answer has been served upon the appel-

lant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. 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. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

§ 4.9 Prehearing briefs.

Based on an examination of the appeal file, 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 § 4.8 (Rule 8). 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 prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 4.10 Prehearing or presubmission conference.

Whether the case is to be submitted without a hearing, or heard pursuant to §§ 4.17 through 4.25 (Rules 17 through 25), the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or examiner of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute;

(e) Such other matters as may aid in the disposition of the appeal.

Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or examiner. This writing shall thereafter constitute part of the record.

§ 4.11 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 § 4.13 (Rule 13). Such waiver shall not affect the other party's rights under § 4.8 (Rule 8). In the event of such elec-

tion (see the time limitations for election in § 4.8 (Rule 8)), the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

§ 4.12 Accelerated procedure.

When a very strong showing is made that there is a reason (e.g., hardship to the contractor) for utilization of an accelerated procedure, the Board will undertake to issue an appeal decision on an expedited basis, without regard to the normal position of the appeal on the docket. Under this accelerated procedure, the case will be further expedited if the parties elect to waive pleadings and elect to waive a hearing, thus submitting the matter for decision on the record. In all other respects these rules will apply.

§ 4.13 Settling of the record.

(a) A case submitted on the record pursuant to § 4.11 (Rule 11) 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, 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 the appeal file described in § 4.4 (Rule 4) and any additional material, pleadings, prehearing briefs, record of prehearing or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhibits, and posthearing briefs, as may thereafter be developed pursuant to the rules in this part. In deciding appeals the Board in addition to considering the Board record may take official notice of facts within general knowledge.

(c) This record will at all times be available for inspection by the parties at an appropriate time and place. 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.

§ 4.14 Depositions.

(a) *When permitted*. After an appeal has been docketed, the Board may, for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for

order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(b) *Orders on depositions.* The time, place, and manner of taking depositions shall be governed by orders of the Board.

(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 to supplement the 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.

§ 4.15 Interrogatories to parties; inspection of documents; admission of facts.

For good cause shown, the Board may permit a party to serve written interrogatories upon the opposing party, order 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 permission will be granted and orders entered as are consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay.

§ 4.16 Service of papers.

A copy of all pleadings, briefs, or other papers addressed to the Board, except the appeal file, shall be served on the other party at the time of filing with the Board. Service of papers may be made personally or by mailing same in a sealed envelope addressed to the other party. When a party is represented by an attorney, certificates of mailing (or stating that personal service was made) should be provided to the Board.

HEARINGS

§ 4.17 Where and when held.

Hearings may be held in Washington, D.C., or upon request seasonably made and upon good cause shown, the Board may in its discretion set the hearing on an appeal at a location other than Washington, D.C. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

§ 4.18 Notice of hearings.

The parties shall be given at least 15 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.

§ 4.19 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 § 4.11 (Rule 11). 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.

§ 4.20 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate in 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 presiding member or examiner 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 presiding member or examiner. 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.

§ 4.21 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath the presiding Board member or examiner shall call to the attention of the witness the provisions of title 18, United States Code, sections 287 and 1001, prescribing 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.

§ 4.22 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.

§ 4.23 Posthearing briefs.

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

§ 4.24 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 reporter and the Department of the Interior agency or office which is involved in the appeal, or equivalent rates if the proceedings are reported by an employee of the Government.

§ 4.25 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.

§ 4.26 Practice before Board.

Representation of a contractor before the Board is governed by Part 1 of this subtitle, which regulates practice before the Department of the Interior.

§ 4.27 Representation of the Government.

Department counsel designated by the Solicitor of the Department represent the agencies, bureaus, and offices cognizant of the disputes brought before the Board. They shall file notices of appearance with the Board, and shall notify the appellant or his attorney that they represent the Government. The Department counsel shall represent the Government in the same manner as a private advocate represents a client.

§ 4.28 Decisions.

Decisions of the Board will be made in writing. Copies thereof will be forwarded simultaneously to both parties by certified mail. The rules of the Board and all final orders and decisions (except those that under applicable law should be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made upon the record, as described in § 4.13 (Rule 13).

§ 4.29 Motions for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon in support of the motion, and shall be filed within 30 days from the date of the receipt of a copy of the Board's decision

by the party filing the motion. Reconsideration of a decision, which may include a hearing or rehearing, may be granted if, in the judgment of the Board, sufficient reason therefor appears.

§ 4.30 Dismissal without prejudice.

In certain cases, appeals docketed before the Board reach a stage where the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the inability to take action upon the appeal has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeal from its docket without prejudice to its restoration when the cause of delay has been removed, and when the parties have complied with conditions specified by the Board in its dismissal order.

§ 4.31 Sanctions.

In the event of failure of a party to comply with a request of the Board for production of documents or other material, or failure of a party to make available an officer, director, official, or employee of such party, for answering written interrogatories or questions on oral examination, without showing an excuse or explanation for such failure satisfactory to the Board, the Board may (a) decide the fact or issue relating to the material which the Board has requested to be produced, or relating to what might have been elicited from the person whose testimony was requested, in accordance with the claim of the other party or in accordance with other evidence available to the Board; (b) dismiss all or part of an appeal in appropriate circumstances; or (c) make such other ruling as the Board determines is just and proper.

§ 4.32 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board, 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. To the extent the court's directive and time limitations will permit, such orders will conform to the rules in this part.

§ 4.33 Standards of conduct.

No member of the Board shall consider an appeal if he has participated in the awarding or administration of the contract in question. There shall be no communication between any party to an appeal and a Board member or Board employee concerning the merits of the appeal, unless such communication (if written) is also furnished to the other party to the appeal, or (if oral) is made in the presence of the other party. The Board also shall exercise care to avoid receiving, except as part of the formally established appeal record, any information having a substantial bearing upon

an appeal from persons who do not represent a party in the appeal, but nonetheless have an interest in the decision to be rendered.

§ 4.34 Effective date and applicability.

The revised rules in this part shall take effect 60 days following publication in the FEDERAL REGISTER. They shall not apply to appeals which have been docketed prior to their effective date, except as otherwise directed by the Board and agreed to by the parties.

APPENDIX I

NOTICE OF APPEAL

BOARD OF CONTRACT APPEALS,
Office of the Secretary,
Department of the Interior,
Washington, D.C. 20240.

Appeal of _____ (Date)

(Name of contractor)

(Address)
Contract No. _____
(Invitation No.)
Specifications No. _____

(Name and Location of Project)

(Name of Bureau or Office)
The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____ by _____
(Name of contracting officer)
The decision or findings of fact is erroneous because:
(State specific facts and circumstances and the contractual provisions involved)

(Signature)

(Title)

[F.R. Doc. 69-4945; Filed, Apr. 24, 1969;
8:45 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER J—MISCELLANEOUS

[General Order 102]

PART 370—CLAIMS

Processing of Time-Barred Claims

The text of Subpart A of this part is hereby designated General Order 102 and revised to read as follows:

Subpart A—Processing of Time-Barred Claims

Sec.
370.1 Definitions.
370.2 General policy.

AUTHORITY: The provisions of this Subpart A issued under sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

Subpart A—Processing of Time-Barred Claims

§ 370.1 Definitions.

(a) "Time-barred claim" means a claim against the Government, for which the statutory period for filing suit has expired.

(b) "Contract" includes every agreement or contract entered into by the Maritime Administrator and/or Maritime Subsidy Board, the Director National Shipping Authority or their delegatee.

§ 370.2 General policy.

(a) Time-barred claims shall be rejected, except as follows:

(1) A time-barred claim which could be asserted in court by way of set-off against a claim in favor of the United States arising out of the same contract may be considered in an overall settlement where settlement will result in a net payment to the United States, provided claimant releases the United States from all claims arising from or in any way connected with said contract.

(2) Time-barred claims in favor of friendly foreign governments shall not be rejected solely because they are time-barred. However, should any such government adopt the practice of asserting the statute of limitations as a defense against claims of the United States, the time-barred claims of that government shall be rejected.

(3) Time-barred claims arising under Second Seamen's War Risk Insurance (or similar earlier types of crew insurance) where the policy was issued or the risks were assumed by the Maritime Administration (or its predecessors), shall not be rejected where the beneficiaries were precluded from receiving the proceeds of the policy by reason of regulations or orders of the U.S. Government (i) by reason of the beneficiary being physically or mentally unable to present the claim, (ii) by the beneficiaries being unaware of their entitlement to the proceeds in question, or (iii) where the claim is not "stale" under general principles of equity.

(b) For the purpose of a claim by a General Agent under General Agency Agreements set forth in 32A CFR AGE-1 for reimbursement by the Maritime Administration on account of a timely payment made to a third party within a period of limitations running from the date the claim of the third party accrued, the period of limitations applicable to the General Agent shall run from the date of such payment. In all other cases involving claims arising under General Agency Agreements, including third-party claims, the policy provided in paragraph (a) of this section shall apply.

(c) Consideration of any claim governed by applicable regulations in this chapter II, including without limitation Parts 272, 292, and 205 of this chapter, shall be controlled by the time limitations expressly provided for with respect to the submission of such claims.

Dated: April 21, 1969.

By order of the Maritime Administrator.

JAMES S. DAWSON, JR.,
Secretary.

[F.R. Doc. 69-4961; Filed, Apr. 24, 1969;
8:47 a.m.]

[General Order 92, Rev.]

PART 375—EXCHANGE OF VESSELS

The text of Part 375 of this title and chapter, exclusive of the Statement of Policy appended thereto (33 F.R. 14545), is hereby revised to read as follows:

- Sec.
- 375.1 Purpose.
- 375.2 Definitions.
- 375.3 General provisions.
- 375.4 Application for exchange.

AUTHORITY: §§ 375.1 to 375.4 issued under sec. 204, 49 Stat. 1987, as amended, 46 U.S.C. 1114; Public Law 86-575, 74 Stat. 312, as amended by Public Law 89-254, 79 Stat. 990.

§ 375.1 Purpose.

This part prescribes the procedures to be followed with respect to the exchange of vessels pursuant to section 510(i) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160(i)), herein referred to as the "Act."

§ 375.2 Definitions.

(a) "Exchange Ship" means an acceptable vessel of 1,500 gross tons or over, constructed or contracted for by the U.S. shipyards before September 3, 1945, owned by a citizen or citizens of the United States, documented under the laws of the United States, and which has not been operated with operating-differential subsidy under Title VI of the Act, by the applicant or any affiliate of the applicant, for at least 3 years immediately prior to the date of the exchange.

(b) "Transfer Ship" means an ocean-going, war-built vessel of 1,500 gross tons or over which was constructed or contracted for by the U.S. shipyards during the period beginning September 3, 1939, and ending September 2, 1945, and owned by the United States.

§ 375.3 General provisions.

(a) Authority to exchange vessels pursuant to the Act expires July 5, 1970.

(b) An applicant acquiring a Transfer Ship shall enter into a contract in

form prescribed by the Maritime Administration.

(c) No payments shall be made by the United States to the owner of an Exchange Ship in connection with any exchange under the Act.

(d) Except where traded-out for use exclusively in trade and commerce on the Great Lakes, including the St. Lawrence River and Gulf, tanker vessels may be traded-out only for major conversions into dry cargo carriers or liquid bulk carriers, including natural gas carriers, but excluding bulk petroleum carriers.

(e) Neither section 510(e) of the Act, nor the nontaxable exchange provisions of the Internal Revenue Code, shall apply to the exchange of ships under the Act.

(f) Any repairs or reconversion necessary at the time of the exchange to place the Transfer Ship in class and prepare it for commercial operation shall be performed in a shipyard within the continental United States.

(g) Title to the transfer and exchange ships shall pass simultaneously on the date specified in the contract.

(h) The applicant may with the consent of the Maritime Administration use the Exchange Ship until completion of preparation of the Transfer Ship for normal operation in commercial service under terms and conditions of a Use Agreement in form prescribed by the Maritime Administration.

(i) The Secretary of Commerce shall consult with and obtain the approval of the Defense Department before any vessel of a military type is exchanged under the provisions of the Act.

§ 375.4 Application for exchange.

(a) Applications for exchange of ships pursuant to the Act shall be filed with the Chief, Office of Ship Operations, Maritime Administration, Department of Commerce, Washington, D.C. 20235, on forms obtained from that office.

(b) Applications are considered as officially filed when a qualified applicant:

(1) Submits fifteen (15) completely filled in copies of Form MA-182 (Application for Exchange of Ships);

(2) Executes and files in triplicate an Affidavit of U.S. citizenship in the form prescribed by the Maritime Administration (32A CFR AGE-2);

(3) Submits financial data as required by the Maritime Administration;

(4) Furnishes, if a corporation, a statement in duplicate showing the names, residence addresses, dates, and places of birth, and citizenship of the officers, directors, and stockholders of record owning five percent (5%) or more of the issued and outstanding stock of the applicant, as well as other ship owning companies in which any such officer, director, or stockholder has a financial interest.

(c) When alternate Transfer Ships are included in one application, consideration will be given to the first listed Transfer Ship which is available. To the extent feasible, as determined by the Maritime Administration, priority will be established based upon the date of filing of the application and such priority shall be maintained as long as the applicant proceeds promptly to effect the exchange of ships. Applications for a Transfer Ship previously applied for by another applicant will not be processed until such Transfer Ship has been rejected by the first applicant or otherwise becomes available for reassignment.

(d) Each applicant will be notified of actions taken on his application.

(e) The Office of Ship Operations coordinates ship exchange activities of the Maritime Administration and approves and administers the provisions of the ship exchange contracts.

Dated: April 22, 1969.

By order of the Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 69-5012; Filed, Apr. 24, 1969; 8:48 a.m.]