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TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

Subchapter B—Trade Practice Conference Rules

[File No. 21-479]

PART 25—COMBINATION STORM WINDOW AND DOOR INDUSTRY

PROMULGATION OF TRADE PRACTICE RULES

Due proceedings having been held under the trade practice conference procedure in pursuance of the act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission:

It is now ordered, That the trade practice rules as hereinafter set forth, together with the industry commitee provision which follows said rules, which have been approved by the Commission in this proceeding, be promulgated as of February 28, 1957.

Statement by the Commission. Trade practice rules for the Combination Storm Window and Door Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The industry for which these rules are established is composed of persons, firms, corporations, and organizations engaged in the manufacture, sale, or distribution of combination storm windows and doors (see definition of "Industry Products" preceding the rules). According to available information, the aggregate annual sales of industry products at factory level approximate $200,000,000.

Primary objectives of the rules are the maintenance of free and fair competition and the elimination and prevention of unfair methods of competition, unfair acts or practices, and other trade abuses. The rules are to be applied to such end and to the exclusion of any acts or practices which suppress competition or otherwise restrain trade.

Proceedings for the establishment of rules were instituted pursuant to an industry application. A general trade practice conference was held in New York City on April 24, 1956, at which rules were proposed for Commission consideration. Thereafter, a draft of proposed rules, which included a proposed industry committee provision, was published by the Commission and made available to all industry members and other interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, amendments, or objections as they desired to offer, and to be heard in the premises. Pursuant to such notice a public hearing was held in Washington, D. C., on November 2, 1956, and all matters there presented, or otherwise received in the proceeding were duly considered.

Thereafter, and upon full consideration of the entire matter, final action was taken by the Commission whereby it approved the rules and the industry committee provision as hereinafter set forth.

Such rules become operative thirty (30) days from the date of promulgation.

The rules. These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which fixes or controls prices through combination or agreement, or which unreasonably restrains trade or suppresses competition, or otherwise unlawfully injures, destroys, or prevents competition, that the rules are to be applied.

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CFR SUPPLEMENTS

(As of January 1, 1957)

The following Supplements are now available:

Title 17 ($0.60)

Title 26, Parts 170–182 ($0.35)

Previously announced: Title 3, 1956 Supp. ($0.40); Title 7, Parts 900–959 ($0.50); Title 18 ($0.50); Title 21 ($0.50); Title 26, Parts 1–79 ($0.35), Parts 80–169 ($0.50), Parts 183–299 ($0.30).

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AUTHORITY: §§ 25.0 to 25.201 issued under sec. 6, 38 Stat. 722; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45.

General statement. The unfair trade practices embraced in the rules herein are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce.

§ 25.0 *Definitions:* As used in this part, the terms "industry member" and "industry products" shall have the following meanings, respectively:

(a) *Industry member.* Any person, firm, corporation, or organization engaged in the manufacture, sale, or distribution of industry products as hereinafter defined.

(b) *Industry products.* Industry products consist of combination storm windows and doors. The storm windows are designed for permanent attachment and are either the self-storing type or the interchangeable type. The windows basically consist of a frame with channels, and glass (or other transparent material) inserts and screen inserts. The storm doors basically consist of a frame and glass (or other transparent material) inserts and screen inserts.

§ 25.1 *Deception (general).* (a) In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice for any industry member to make any representation which, directly or by implication, or through failure adequately to disclose additional relevant information, has the capacity and tendency to deceive purchasers or prospective purchasers in any material respect, including, but not limited to, representations relating to construction, design, model, origin, manufacture, quality, strength, utility, durability, or life expectance, of such products, or the benefits to be derived from the use thereof, or with respect to the need for repair or maintenance of such products or any service or services to be supplied to purchasers or prospective purchasers of the products.

(b) Among the practices inhibited by this section are the following:

(1) Representing that savings in fuel, or reduction in heat loss, will result from the use of storm windows or doors, when such representation is false or misleading in any material respect.

(2) Representing or implying contrary to fact that a building equipped with combination storm windows and/or doors affords positive protection against prowlers, burglars, or other individuals unlawfully attempting entry into such building.

(3) Representing or implying that combination storm windows or doors will not shrink, rot, rust, warp, twist, sag, or otherwise become unserviceable, when such is not the fact.

(4) Representing or implying that the metal portions of storm windows and/or doors are made of "aircraft aluminum," or are of extruded metal, when such is not the fact.

(c) The inhibitions of this section are applicable with respect to every species of advertisement or form of representation, whether in a newspaper or other periodical, telephone directory, sales catalog, sales promotional literature, radio or television broadcast, or other media, or whether in the form of a mark, tag, or label on, affixed to, or accompanying, the product. [Rule 1]

§ 25.2 *Bait advertising.* It is an unfair trade practice for an industry member to offer for sale any industry product when the offer is not a bona fide effort to sell the product so offered.

NOTE: In determining whether there has been a violation of this section, consideration will be given to acts or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product, but was made for the purpose of contacting prospective purchasers and selling them a product or products other than the products offered. Among acts or practices which will be considered in making that determination are the following:

(a) The creation, through the initial offer or advertisement, of a false impression of the grade, quality, make, value, currency of model, size, usability, or origin of the product offered.

(b) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

(c) The disparagement, by acts or words, of the product offered.

(d) The showing, demonstrating, and in the event of sale, the delivery, of a product which is unusable or impractical for the purpose represented or implied in the offer.

(e) The refusal, in the event of sale of the product offered, to deliver such product to the buyer within a reasonable time thereafter.

(f) The failure to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands.

It is not necessary that each act or practice set forth be present in order to establish that a particular offer is violative of this section.

[Rule 2]

§ 25.3 *Deceptive pricing.* (a) It is an unfair trade practice for any member of the industry to represent or imply, in advertising or otherwise, that an industry product may be purchased for a specified price when such is not the fact; or that an industry product is being offered for sale at a reduced price when such is not the fact; or otherwise to deceive purchasers or prospective purchasers with respect to the price of products offered for sale.

(b) Among the practices inhibited by this section are:

(1) Representing or implying that a stated price is for a complete functional combination storm window or door when in fact the product so priced is deficient as to parts necessary and usual to the proper functioning and appearance of such combination storm window or door (such as hinges, glass, screening, frames, etc.).

(2) Representing or implying that the price of combination storm windows or doors includes certain services, such as installation, adjustments, weather stripping, etc., or includes parts or accessories such as door closers, grilles, etc., when such is not the fact.

(3) Representing or implying that the selling price of any combination storm window or door has been reduced from what is in fact a fictitious price, or that such price is a reduced or special price when it is in fact the regular selling price of such combination storm window or door, or when over a substantial period of time the alleged "reduced" or "special" price has been the price at which such products customarily have been sold.

(4) Representing or implying that prices applicable only to certain sizes of combination storm windows or doors apply to other or all sizes of such windows or doors.

(5) Making or publishing any false, misleading, or deceptive representation

concerning installment sales contracts to be used in the sale of industry products, the terms or conditions of such contracts, the down payment to be required, the rate of interest or financing cost to be charged, or respecting any other matters relative to such contracts.

(6) Representing or implying, contrary to fact, that combination storm windows or doors may be purchased at factory prices ("factory to you," etc.).

(b) It is also an unfair trade practice to sell, or offer for sale, any combination storm window or door at a price less than the cost thereof to the seller as a "loss leader," used in inducing, and sold only in combination with, the purchase of other merchandise and/or services on which the seller recoups such loss, when this practice has the capacity and tendency or effect of misleading or deceiving the purchasing public. [Rule 3]

§ 25.4 *Guarantees, warranties, etc.* (a) It is an unfair trade practice to represent, in advertising or otherwise, that any industry product is "guaranteed" unless the nature and extent of such guarantee is conjunctively disclosed and without deceptively minimizing the terms and conditions relating to the obligations of the guarantor.

(b) It is also an unfair trade practice to use, or cause to be used, any guarantee in which the obligations of the guarantor are impracticable of fulfillment, or in respect to which the guarantor fails or refuses to observe his liabilities thereunder.

(c) This section shall be applicable not only to guarantees but also to warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty. [Rule 4]

§ 25.5 *Use of the word "free."* In connection with the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to use the word "free," or any other word or words of similar import, in advertisements or in other offers to the public, as descriptive of an article of merchandise, or service, which is not an unconditional gift, under the following circumstances:

(a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood; and, regardless of such disclosure:

(b) When, with respect to any article of merchandise required to be purchased in order to obtain the "free" article or service, the offerer (1) increases the ordinary and usual price of such article of merchandise, or (2) reduces its quality, or (3) reduces the quantity or size thereof.

NOTE: The disclosure required by paragraph (a) of this section shall appear in close conjunction with the word "free" (or other word or words of similar import) wherever such word first appears in each advertisement or offer. A disclosure in the form of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the word "free," will not be regarded as compliance.

[Rule 5]

§ 25.6 *Deceptive testimonials or depictions.* It is an unfair trade practice for a member of the industry to use any testimonial of a user of any industry product or of any other person, or to use any picture or depiction thereof, which is false or which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers. [Rule 6]

§ 25.7 *Misrepresenting products as conforming to standard.* It is an unfair trade practice to represent, through advertising or otherwise, that any product of the industry conforms to any standard recognized in or applicable to the industry, when such is not the fact. [Rule 7]

§ 25.8 *Deceptive use of seals.* In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice for any industry member to use a seal or insignia of any organization without the authorization of that organization, or to use any seal or insignia which is of such form or design, or contains such wording, as to simulate the seals or insignia which are issued by an organization for use with respect to other products, when the use thereof has the capacity and tendency or effect of deceiving purchasers or prospective purchasers.

NOTE: Seals of approval used by industry members should identify the organization issuing and/or authorizing the use of the seal. Such seal should be based on adequate inspection and tests of the industry member's products and not otherwise contravene the provisions of § 25.1 relating to deception generally.

[Rule 8]

§ 25.9 *Misrepresentation as to character of business.* It is an unfair trade practice for any industry member, in the course of or in connection with the sale of industry products, to represent, directly or indirectly, that he is a manufacturer of industry products, unless he owns and operates or directly controls a factory wherein such products are made, or in any other manner to misrepresent the character, extent, or type of his business. [Rule 9]

§ 25.10 *Deceptive use of trade or corporate names, trade-marks, etc.* The use of any trade name, corporate name, trade-mark, or other trade designation which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the character, name, nature, or origin of any product of the industry, or of any material used therein, or which is false or misleading in any other material respect, is an unfair trade practice. [Rule 10]

§ 25.11 *Substitution of products.* It is an unfair trade practice to make an unauthorized substitution of products, where such substitution has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, by—

(a) Shipping, delivering, or installing industry products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without advising the purchaser of the substitution and obtaining his consent thereto prior to making shipment or delivery; or

(b) Falsely representing the reason for making a substitution. [Rule 11]

§ 25.12 *Misuse of terms "custom built," "made-to-order," etc.* In the sale, offering for sale, or distribution of combination storm windows or doors, it is an unfair trade practice to use the terms "custom built," "made-to-order," or any other words or terms of similar import, as descriptive of any combination storm window or door which has not been made in accordance with specifications as to the size, quality, composition, etc., supplied by or on behalf of the consumer-purchaser prior to the manufacture or assembly of the industry product, as distinguished from a combination storm window or door which is a ready-made or stock product. [Rule 12]

§ 25.13 *Defamation of competitors or false disparagement of their products.* The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of competitors' products in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice. [Rule 13]

§ 25.14 *Imitation of trade-marks, trade names, etc.* The imitation or simulation of trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice. [Rule 14]

§ 25.15 *Coercing purchase of one product as a prerequisite to the purchase of other products.* The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably to restrain trade, is an unfair trade practice. [Rule 15]

§ 25.16 *Procurement of competitors' confidential information.* It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained so as to injure said competitor in his business or to suppress competition or unreasonably restrain trade. [Rule 16]

§ 25.17 *Unfair threats of infringement suits.* The circulation of threats of suit for infringement of patents or trade-marks among customers or pros-

pective customers of competitors, not made in good faith but for the purpose or with the effect of thereby harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or pejudicing competitors in their business, is an unfair trade practice. [Rule 17]

§ 25.18 *Inducing breach of contract.* (a) Knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers, or interfering with or obstructing the performance of any such contractual duties or services, under any circumstance having the capacity and tendency or effect of substantially injuring or lessening present or potential competition, is an unfair trade practice.

(b) Nothing in this section is intended to imply that it is improper to solicit the business of a customer of a competing industry member; nor is the section to be construed as in anywise authorizing any agreement, understanding, or planned common course of action by two or more industry members not to solicit business from the customers of either of them, or from customers of any other industry member. [Rule 18]

§ 25.19 *Commercial bribery.* It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Rule 19]

§ 25.20 *Prohibited forms of trade restraints (unlawful price fixing, etc.)* [1] It is an unfair trade practice for any member of the industry, either directly or indirectly, to engage in any planned common course of action, or to enter into or take part in any understanding, agreement, combination, or conspiracy, with one or more members of the industry, or with any other person or persons, to fix or maintain the price of any goods or otherwise unlawfully to restrain trade; or to use any form of threat, intimidation, or coercion to induce any member of the industry or other person or persons to engage in any such planned common course of action, or to become a party to any such understanding, agreement, combination, or conspiracy. [Rule 20]

§ 25.21 *Exclusive deals.*[2] It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of any industry product, for use, consumption, or resale within any place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale, or such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [Rule 21]

§ 25.22 *Prohibited discrimination* [2]—(a) *Prohibited discriminatory prices, rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however:*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use;

(2) That nothing contained in this paragraph shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

NOTE: Cost justification under the above proviso depends upon net savings in cost based on all facts relevant to the transactions under the terms of sub-paragraph (2) of this paragraph. For example, if a seller regularly grants a discount based upon the purchase of a specified quantity by a single order for a single delivery, and this discount is justified by cost differences, it does not follow that the same discount can be cost justified if granted to a purchaser of the same quantity by multiple orders for multiple deliveries.

(3) That nothing contained in this section shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this paragraph shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to obsolescence of seasonal goods, actual or imminent deterioration of perishable goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned;

(5) That nothing contained in this section shall prevent the meeting in good faith of an equally low price of a competitor, or the services or facilities furnished by a competitor.

NOTE: In complaint proceedings, justification of price differentials under subparagraphs (2), (4) and (5) of this paragraph of this section is a matter of affirmative defense to be established by the person or concern charged with price discrimination.

(b) *Examples of price differential practices.* The following are examples of price differential practices to be considered as subject to the prohibitions of paragraph (a) of this section when involving goods of like grade and quality which are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and which are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use, and when—

(1) The commerce requirements specified in paragraph (a) of this section are present; and

(2) The price differential has a reasonable probability of substantially lessening competition or tending to create a monopoly in any line of commerce, or

[1] The inhibitions of this section are subject to Public Law 542, approved July 14, 1952, 66 Stat. 632 (the McGuire Act) which provides that with respect to a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, a seller of such a commodity may enter into a contract or agreement with a buyer thereof which establishes a minimum or stipulated price at which such commodity may be resold by such buyer when such contract or agreement is lawful as applied to intrastate transactions under the laws of the State, Territory, or territorial jurisdiction in which the resale is to be made or to which the commodity is to be transported for such resale, and when such contract or agreement is not between manufacturers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

[2] As used in this section, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

of injuring, destroying, or preventing competition with the industry member or with the customer receiving the benefit of the price differential, or with customers of either of them; and

(3) The price differential is not justified by cost savings (see subparagraph (2) of paragraph (a) of this section); and

(4) The price differential is not made in response to changing conditions affecting the market for or the marketability of the goods concerned (see subparagraph (4) of paragraph (a) of this section); and

(5) The lower price was not made to meet in good faith an equally low price of a competitor (see subparagraph (5) of paragraph (a) of this section).

Example No. 1. At the end of a given period an industry member grants a discount to a customer equivalent to a fixed percentage of the total of the customer's purchases during such period and fails to grant such discount to other customers under like conditions.

Example No. 2. An industry member sells goods to one or more of his customers at a higher price than he charges other customers for like merchandise. It is immaterial whether or not such discrimination is accomplished by misrepresentation as to the grade and quality of the products sold.

(c) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) *Prohibited discriminatory services or facilities.* It is an unfair trade practice for any member of the idustry engaged in commerce to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

(f) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this section.

NOTE: Paragraph (f) of this section is a restatement of section 2 (f) of the Clayton Act as amended. In a complaint proceeding under this section of said act, in order to make out a prima facie violation, the Commission must show that the favored buyer induced or received the lower price knowing, or knowing facts from which he should have known, that such price was violative of section 2 (a) of said act and not justified under subparagraphs (2), (4) or (5) of paragraph (a) of this section. When, in any such proceeding, the issue is limited to the question of whether the price differential involved made only due allowance for differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which the goods were sold and delivered, the Commission may establish a prima facie case in a number of ways, including:

(1) By showing that the buyer paying the lower price knew that the methods by, and quantities in, which the goods were sold and delivered to him by the seller were the same as in the case of the competing buyer or buyers paying the higher price or prices; or

(2) By showing, when there is a difference in the methods or quantities in which the goods were sold and delivered by the seller to the buyer than in the case of the competing buyer or buyers paying the higher price or prices, that the buyer paying the lower prices knew the nature and extent of such differences and knew or should have known that they could not have resulted in sufficient cost savings of the kind and character specified as to justify the price differential.

(g) *Purchases by U. S. Government—Applicability of Robinson-Patman Antidiscrimination Act to same.* In an opinion submitted to the Secretary of War under date of December 28, 1936, the U. S. Attorney General advised that the Robinson-Patman Antidiscrimination Act "is not applicable to Government contracts for supplies." (38 Opinions, Attorney General 539.)

§ 25.201 *Industry committee.* The provisions of § 16.1 of this subchapter shall be applicable to an industry committee established under this part.

Promulgated by the Federal Trade Commission February 28, 1957.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 57-1507; Filed, Feb. 27, 1957; 8:53 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 730—RICE

SUBPART—REGULATIONS FOR ESTABLISHMENT OF FARM ACREAGE ALLOTMENTS AND NORMAL YIELDS FOR 1957 CROP OF RICE

Correction

In Federal Register Document 57-8944, published at page 8423 of the issue for November 3, 1956, the introductory text of § 730.818 should be corrected by changing the word "now" to read "new".

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 997—FILBERTS GROWN IN OREGON AND WASHINGTON

ADMINISTRATION RULE FOR OBTAINING CANDIDATES IN CONJUNCTION WITH NOMINATION ELECTIONS FOR CERTAIN MEMBERS AND ALTERNATE MEMBERS OF FILBERT CONTROL BOARD

Notice of a proposed administrative rule setting forth an alternative method of obtaining candidates for positions on the Filbert Control Board was published in the FEDERAL REGISTER issue of February 9, 1957 (22 F. R. 849). The said Filbert Control Board is the administrative agency for the operation of Marketing Agreement No. 115, as amended, and Marketing Order No. 97, as amended (7 CFR Part 997) regulating the handling of filberts grown in Oregon and Washington, effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

In said notice, an opportunity was afforded interested persons to submit written data, views, or arguments relating thereto. No such written communications were received within the period set forth.

Therefore, after consideration of all relevant matters, it is hereby ordered that, on and after the date of publication of this document in the FEDERAL REGISTER, the following administrative rule shall be in effect:

§ 997.432 *Nominations.* Whenever petitions submitted pursuant to § 997.32 (b) fail to result in the submission of at least twice as many names as there are positions to be filled, the Board shall request all County Agricultural Agents in filbert producing counties which produced an average of at least 10 percent of the total production in the area of production during the preceding fiscal year, to recommend a qualified grower for each position to be included on the ballot.

It is hereby found and determined that delaying the effective date of this order later than the date of its publi-

cation in the FEDERAL REGISTER is impracticable, unnecessary, and contrary to the public interest (see 5 U. S. C. 1001 et seq.) because the alternate procedure established hereby will be needed to obtain an adequate number of candidates for positions on the Filbert Control Board, a nominee for each position must be elected by growers from among such candidates and submitted to the Secretary by March 20 each year, and the time available on and after the publication of this order in the FEDERAL REGISTER will be necessary to enable nominations to be obtained and submitted to the Secretary by such date.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 25, 1957.

[SEAL] ROY W. LENNARTSON, *Deputy Administrator, Marketing Services.*

[F. R. Doc. 57-1528; Filed, Feb. 27, 1957; 8:58 a. m.]

[Lime Order 3, Amdt. 5]

PART 1001—LIMES GROWN IN FLORIDA

QUALITY AND SIZE REGULATION

Findings. (1) Pursuant to the marketing agreement and Order No. 101 (7 CFR Part 1001) regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations of the Florida Lime Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this regulation relieves restriction on the handling of limes.

Order, as amended. The provisions in subparagraph (2) (ii) of paragraph (b) of § 1001.303 (Lime Order 3, as amended; 21 F. R. 5033, 5821, 6159, 7021, 9741) are hereby further amended, for the period from 12:01 a. m., e. s. t., March 1, 1957, to 12:01 a. m., e. s. t., April 1, 1957, so as to permit the handling of large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) which grade at least U. S. No. 2 Mixed Color and are of a size not smaller than 1⅝ inches in diameter: *Provided*, That, not to exceed 5 percent, by count, of the limes in any container may be smaller than 1⅝ inches in diameter. Otherwise, the provisions of the aforesaid subparagraph (2) (ii) of paragraph (b) of § 1001.303 shall remain in full force and effect.

As used herein, the term "U. S. No. 2 Mixed Color" shall have the same meaning as when used in the United States Standards for Persian (Tahiti) Limes (7CFR 51.1001 et. seq.; 18 F. R. 7107).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 26, 1957.

[SEAL] S. R. SMITH, *Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 57-1545; Filed, Feb. 27, 1957; 8:59 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146e—CERTIFICATION OF BACITRACIN OR BACITRACIN-CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

Correction

In F. R. Doc. 57-1320, appearing at page 1036 of the issue for Wednesday, February 20, 1957, the following changes should be made:

1. In item 1, the section number "§ 141.403" should read "§ 141e.403" and the three references in that section to "§ 141.401" should read "§ 141e.401".

2. In the amendatory language of item 6, "Section 146.403" should read "Section 146e.403".

3. In item 6d, the paragraph heading should read "(d) *Requests for certification; samples.*"

4. Item 7c should read as follows:

c. Paragraph (a) (4) is amended by changing the words "bacitracin or zinc bacitracin" to read "bacitracin, zinc bacitracin, or bacitracin methylene disalicylate".

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter D—Military Reservations and National Cemeteries

PART 553—NATIONAL CEMETERIES

MISCELLANEOUS AMENDMENTS

1. Sections 553.1, 553.2, and 553.5 are revised to read as follows:

§ 553.1 *Administration, control, and supervision*—(a) *General.* The Quartermaster General, under the direction and control of the Assistant Secretary of the Army (Civil-Military Affairs), is responsible for the establishment, development, operation, maintenance, and administration of the National Cemetery System and for the formulation of plans, policies, procedures, and regulations pertaining thereto. See act of September 12, 1950 (64 Stat. 844; 24 U. S. C. 278).

(b) *United States possessions.* The commanding generals, United States Army, Alaska; United States Army, Pacific; and United States Army, Caribbean are charged with the immediate supervision and administration of national cemeteries within their respective areas. These commanders are responsible, under regulations and policies established by The Quartermaster General, for the following functions:

(1) Operation, maintenance, repairs and utilities, including repair of motor vehicles.

(2) Procurement of supplies and equipment (except permanent headstones and grave markers, motor vehicles, and grave decorating flags).

(3) Periodic inspection of national cemetery installations (including annual general inspections).

(4) Employment and administration of personnel.

(5) Property accountability.

(6) Preparation and submission to The Quartermaster General, Attn: Memorial Division, of budgetary data for national cemetery activities and administration of funds made available therefor.

(c) *Federal jurisdiction.* Where the State legislature has given the consent of the State to the purchase of the land which now comprises the national cemetery, the jursidiction and power of legislation of the United States over national cemeteries will, in all courts and places, be held to be the same as is granted by Article 1, Section 8, Constitution of the United States. See act of July 1, 1870 (16 Stat. 188; 24 U. S. C. 287).

§ 553.2 *Donations*—(a) *Conditional gifts.* The Secretary of the Army is authorized in his discretion to accept, receive, hold, administer, and expend any gift, devise, or bequest of property, real or personal, made on condition that it be used for the benefit of or in connection with, the establishment, operation, maintenance, or administration of any cemetery under the jursidiction of the Department of the Army. All such proffers of donations or gifts for national cemeteries will be referred to The Quartermaster General, Attn: Memorial Division, for appropriate action.

(b) *Unconditional gifts.* All proffers of donations or gifts which are unconditional will be referred to The Quartermaster General, Attn: Memorial Division, for appropriate action, together with a report setting forth the material facts and the recommendations of the superintendent and supervising commander.

(c) *Policy.* Department of the Army policy is that all proffered donations or gifts may be accepted from legitimate societies and organizations or reputable individuals for beautifying national cemeteries, subject to the following additional provisions:

(1) The name of the Department of the Army is not associated in any manner by the society, organization, or individual with the solicitation of the donation.

(2) Delivery is made to the cemetery, or to such other point designated by the Department of the Army, without expense to the Government.

(3) Installation, placing, or planting is in keeping with the planned development of the cemetery and the donor agrees to the use thereof at any place within the cemetery.

(4) Donor is not permitted to affix to the items donated nor to place in the cemetery or elsewhere on Department of the Army property any commemorative tablet or plaque.

(d) *Tributes to Unknown Soldier.* Approval of drawings, sketches, or plans for and authority for acceptance of plaques, trophies, and other tributes offered for presentation to The Unknown Soldier, Arlington National Cemetery, is the responsibility of The Quartermaster General. Such approval and acceptance are subject to the following restrictions:

(1) Presentation must be from an organization which is nonpartisan and purely patriotic in purpose.

(2) Plaque, trophy, or other tribute will show that it is presented to The Unknown Soldier.

(3) Dimensions of any object approved for acceptance will not occupy an area in the display case greater than 36 square inches.

(4) The design of and inscription on the plaque must be consistent with the sacred purpose and nature of this shrine to The Unknown Soldier.

(5) Only one plaque may be presented by an organization. Separate plaques from subordinate elements of an organization will not be approved.

(6) Requests, accompanied by sketch or plan and description, replica or model of the proposed plaque, must be submitted to The Quartermaster General, Attn: Memorial Division.

§ 553.5 *Interments and disinterments*—(a) *Who may be interred*—(1) *General.* The act of May 14, 1948 (62 Stat. 234; 24 U. S. C. 281) authorizes burial in a national cemetery under such regulations as the Secretary of the Army may prescribe for:

(i) Any member or former member of the Armed Forces of the United States whose last service terminated honorably, by death or otherwise;

(ii) Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during such war, and whose last service terminated honorably, by death or otherwise;

(iii) The wife, husband, widow, widower, minor child and, in the discretion of the Secretary of the Army, unmarried adult child of any of the persons enumerated in subdivisions (i) and (ii) of this subparagraph;

(iv) Persons who were members of the Cabinet of the President of the United States at any time between April 6, 1917 and November 11, 1918.

(2) *Members of Armed Forces of the United States.* Any member or former member of the Armed Forces of the United States whose last service terminated honorably, by death or otherwise, is entitled to burial in a national cemetery (see 24 U. S. C. 281). The Armed Forces include the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) *National Guard.* Members of the National Guard who have been called or drafted into Federal service as provided by the act of August 10, 1956 (70a Stat. 199; 32 U. S. C. 3500 and 32 U. S. C. 3501) are eligible for burial in a national cemetery.

(4) *Members or former members of reserve components of the Armed Forces.* Members or former members of the reserve components who have rendered service on active duty, other than active duty merely for training purposes, are eligible provided their last active service terminated honorably. Membership alone in a reserve component does not constitute service within the meaning of the act of May 14, 1948 (62 Stat. 234; 24 U. S. C. 281).

(5) *Commissioned officers, Coast and Geodetic Survey.* Commissioned officers, United States Coast and Geodetic Survey, who die during and subsequent to the service specified in the following categories and whose last service terminated honorably are eligible for interment in national cemeteries regardless of time of death:

(i) Commissioned officers assigned to areas of immediate military hazard described in the act of December 3, 1942 (56 Stat. 1038; 33 U. S. C. 855a), as amended.

(ii) Commissioned officers serving in the Philippine Islands on December 7, 1941.

(iii) Commissioned officers actually transferred to the Department of the Army or the Department of the Navy under the provisions of the act of May 22, 1917 (40 Stat. 87; 33 U. S. C. 855).

(6) *Public Health Service.* (i) Interment in national cemeteries of the remains of commissioned officers of the United States Public Health Service who were detailed for duty with the Army or Navy during World War I pursuant to the act of July 1, 1902 (32 Stat. 712, 713), as amended, and Executive Order 2571, April 3, 1917, is authorized. See act of April 30, 1956 (46 U. S. C. 654; 70 Stat. 124).

(ii) By virtue of authority granted by section 216, act of July 1, 1944 (58 Stat. 690; 42 U. S. C. 217), Executive Order 9575, June 21, 1945, superseded by Executive Order 10349, April 26, 1952, and as amended by Executive Order 10356, May 29, 1952, Executive Order 10362, June 14, 1952, and Executive Order 10367, June 30, 1952, established the Public Health Service as a military service for the period of World War II and consecutive periods thereafter. Accordingly, all officers of the commissioned corps of the Public Health Service who served at any time during the period December 8, 1941 to, and including, July 3, 1952 and whose services terminated honorably are entitled to burial in national cemeteries regardless of when death occurs.

(7) *Citizens of the United States serving in the armed forces of other allied governments.* Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during such war, and whose last service terminated honorably, by death or otherwise, is entitled to burial in a national cemetery. Persons to be eligible under this authority must have been citizens of the United States at the time of entering the service of such armed forces and at the time of death. See 24 U. S. C. 281.

(8) *Members of families of service or former service personnel.* (i) The following members of families of personnel listed in subparagraphs (2) through (7) of this paragraph are authorized interment in national cemeteries, provided the remains of such persons may, in the discretion of the Secretary of the Army, be removed from a national cemetery proper and interred in the post section of a national cemetery or in a post cemetery if, upon death, the related member of the armed forces of the United States or allied government is not buried in the same or adjoining gravesite:

(*a*) *Spouses, widows, and widowers.* (*1*) The spouses, widows, and widowers of eligible service or former service personnel may be buried in the same grave or in an adjoining (side-by-side) grave if space is available.

(*2*) Should the death of the non-service-connected spouse occur first, interment may be made upon the execution of a written agreement by the service or former service-connected spouse that he or she will be interred eventually in the same grave or in an adjoining (side-by-side) grave.

(*3*) When the interment of the non-service-connected widow (widower) is desired, either in the same grave with the service-connected spouse or in an adjoining gravesite which has been reserved, the next of kin or duly authorized representative will be required to submit a written statement that the widow (widower) of the service-connected spouse already buried in the national cemetery has not remarried and is still the legal widow (widower) of the service-connected spouse.

(*4*) Widows or widowers of members of the Armed Forces of the United States lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action may be buried in the national cemetery of their choice if space is available.

(*5*) Widows or widowers of members of a group burial interred in a national cemetery may be buried in an adjoining, adjacent, or neighboring grave in the same cemetery.

(*6*) Divorce of a non-service-connected spouse or remarriage subsequent to interment of the service-connected spouse

renders such non-service-connected spouse ineligible for burial in a national cemetery.

(b) *Children.* (1) Minor and, at the discretion of the Secretary of the Army, unmarried adult children ((b) (2) of this subdivision) of any member or former member of the Armed Forces of the United States may be buried in the same grave in which a parent has been or will be interred if space is available therein. Should the death of the child occur prior to that of either of the parents, interment may be made upon the execution of a written agreement by the service-connected parent that he or she will be buried eventually in the same or an adjoining (side-by-side) grave; such agreement to be executed with the understanding that all available space in the occupied grave (space determination will be based upon first burial at depth of 7 feet) must be used for any future family interments, including that of the service-connected parent, before the adjoining grave may be so used. Interment of additional eligible children may be made, prior to the death of the service-connected parent, provided not more than two side-by-side gravesites are used and that adequate space is reserved therein for burial of the service-connected parent.

(2) In the application of this part, the term "unmarried adult children" will be interpreted to include widows, widowers, divorcees, and unmarried persons 21 years of age or over and will be restricted to those who were in fact, up to the time of death, dependent for support upon the service-connected parent or surviving spouse because of physical or mental condition. Should the death of both parents occur prior to that of an unmarried adult child, the latter may be interred in the same grave in which a parent has been interred, provided such adult child was incapable of self-support up to the time of death because of physical or mental condition. The interment of "unmarried adult children" will be made at the discretion of the Secretary of the Army and request for burial of all such persons will be referred to The Quartermaster General, Attn: Memorial Division, for approval. No interment of such cases will be made without prior authorization of The Quartermaster General. A statement of the attending physician must be submitted attesting to the nature of the condition, and the period of time such child was so afflicted or the period for which said physician attended the child for such disability.

(3) The term "child" includes stepchild and adopted child. The term "parent" includes stepparent and parent through adoption. Each case pertaining to the eligibility of such children for burial in a national cemetery will be referred to The Quartermaster General, Attn: Memorial Division, for approval prior to interment. Such cases will include a full statement of pertinent facts to enable The Quartermaster General to make a decision.

(9) *Members of the Cabinet.* Persons who were members of the Cabinet of the President of the United States at any time during the period between April 6, 1917 and November 11, 1918 may be buried in any national cemetery, provided interment is without cost to the United States. See act of May 14, 1948 (62 Stat. 234; 24 U. S. C. 281).

(10) *Confederate veterans.* (i) Veterans who served in the Confederate armies during the Civil War are in certain circumstances entitled to burial in three national cemeteries: Arlington, Virginia; Springfield, Missouri; and Little Rock, Arkansas. See act of August 24, 1912 (37 Stat. 440; 24 U. S. C. 282); act of March 3, 1911 (36 Stat. 1077); act of February 7, 1913 (37 Stat. 663); and act of March 26, 1938 (52 Stat. 117).

(ii) Interments in the Confederate sections at Arlington, Springfield, and Little Rock are restricted to officers and enlisted men who served honorably in the Army or Navy of the Confederate States and their wives or widows under the same regulations and restrictions that govern interments in national cemeteries, except that where an honorable discharge or written parole cannot be produced or the alleged service cannot be verified from the official records, an affidavit of one or more reliable witnesses as to the service of the decedent, when duly attested before an officer authorized to administer oaths, may be accepted as satisfactory proof of such service. Where it becomes necessary to file an affidavit as to honorable service, any request for interment in Springfield must be favorably indorsed by the proper officer or representative of Campbell Camp 488, United Confederate Veterans, Springfield, Missouri.

(b) *Nonburial of persons convicted of certain crimes.* (1) A person otherwise eligible for burial in a national cemetery who is convicted of a crime which results in loss of United States nationality or who is convicted in a Federal, State, or United States military court of a crime, the maximum penalty for which, in the jurisdiction in which convicted, is death or which equals or exceeds 15 years' imprisonment, will not be buried in a national cemetery, except that any person who, subsequent to such conviction serves in the Armed Forces of the United States and whose last service therein is terminated honorably by death or otherwise, may be buried in a national cemetery.

(2) Persons excluded from burial in a national cemetery under the provisions of subparagraph (1) of this paragraph, may be buried in such other military burial ground as the Quartermaster General may select, but no military ceremony will be performed at such burial.

(c) *Utilization and reservation of gravesites.* (1) Not more than a total of two adjoining (side-by-side) gravesites will be used and reserved for the instant and eventual interment of the persons involved in the spouse and parent-child relationship (paragraph (a) (8) of this section), viz: service-connected person, spouse (widow or widower), and children of the service-connected person.

(2) When a service-connected person is interred, an adjoining gravesite may be reserved for the eventual interment of the nonservice-connected spouse, provided space is available and a written request for the gravesite reservation is received. When request for a gravesite reservation is received and an adjoining gravesite is not available, option will be given for:

(i) Interment in the same gravesite with the service-connected spouse.

(ii) Removal at private expense of the remains of the service-connected spouse to a location where two adjoining gravesite locations are available.

(3) No gravesites will be assigned in advance of their requirements for burial purposes. Reservation of a gravesite for the widow of a nonrecoverable member of the Armed Forces of the United States (lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action) is not authorized. Space in such cases will be assigned as needed.

(4) If it is not possible to make reservation of an adjoining gravesite for the surviving spouse of a member of a group burial, the reservation of an adjacent or neighboring gravesite is authorized.

(5) The Quartermaster General will communicate periodically with surviving nonservice-connected spouses having reservations for the purpose of determining whether it is desired that the reservation remain in force. If it is not possible to obtain a request for continuation of the reservation, such reservation is subject to cancellation. Cancellation of an adjoining gravesite reservation will not preclude burial of the survivor under one of the options shown in subparagraph (2) of this paragraph.

(d) *Burial sections.* (1) Layout plans for burial sections in all national cemeteries will be prepared by The Quartermaster General. Sizes of gravesites will conform to dimensions designated on layout plans prepared by The Quartermaster General.

(2) Burials in unused gravesites in existing established sections of national cemeteries will be in accordance with policies that were in effect for the different categories of decedents at the time the specific section within the cemetery was established.

(3) In all new sections to be developed and in all new cemeteries to be established, interments will be made without distinction as to race and rank. Group interments in new sections will be made in the same section with individual interments. No new separate sections will be established exclusively for group interments.

(4) As the need arises for the use of new sections for burials, such cases will be forwarded to The Quartermaster General, Attn: Memorial Division, for approval. Plans and recommendations for resolving the situation will accompany the request for final decision.

(5) In existing national cemeteries no new post sections will be established and existing post sections will not be expanded. No post sections will be established in new national cemeteries.

(e) *Disinterments.* (1) Interments of eligible remains in national cemeteries are considered to be permanent and final and disinterments will not be permitted except upon approval of The Quartermaster General. Disinterments and removal of remains from a national cemetery will be approved only when next of kin (includes the person who directed the initial interment if still living) give their consent and establish cogent reasons for the disinterment, or in recognition of a court order directing the disinterment.

(2) All requests for authority to disinter remains will be submitted to the Quartermaster General, Attn: Memorial Division, and must state the reason for desiring the disinterment and be accompanied by the following documents:

(i) Notarized affidavits by all close living relatives of the deceased, stating that they interpose no objection to the proposed disinterment. "Close relatives" are defined as widow (widower), parents, adult brothers and sisters, and adult children and will include the person who directed the initial interment, if living.

(ii) A sworn statement, by a person having knowledge thereof, that those who supplied such affidavits comprise all the living close relatives of the deceased.

(3) In lieu of the documents required in subparagraph (2) of this paragraph, an order of a court of competent jurisdiction will be considered.

(4) Any disinterment that may be authorized under this paragraph must be accomplished without expense to the government.

2. In § 553.6 (b), revise subparagraphs (1), (7), (8), and (9) and revoke subparagraph (10), and in § 553.6 (c), add subparagraph (11), as follows:

§ 553.6 *Headstones and monuments.* * * *

(b) *Inscription on Government headstones.* (1) The inscription on Government headstones furnished for individual graves of members or former members of the Armed Forces (except decedents referred to in subparagraphs (2) and (3) of this paragraph) normally will consist of a religious emblem, name of decedent, State requested by next of kin at time of interment or the State listed as residence, grade, organization (or component if applicable), the war or wars in which service was rendered (if any), the complete dates of birth and death, and also may include any approved decorations. Normally, the highest grade held by decedent and the organization (or component) in which such grade was held will be used unless next of kin desires a particular organization in which a decedent may have served in a lower grade. In the latter case, the organization desired and the highest Federally recognized grade held by decedent in that organization (or component) will be used. "World War II" may be inscribed on the grave markers of all members of the United States Armed Forces who lost their lives while serving in such forces outside the continental United States during the period September 3, 1939 to December 6, 1941, inclusive, and on the grave markers of those who were members of the United States Armed Forces during the period December 7, 1941 to December 31, 1946, inclusive. The word "Korea" may be placed on Government headstones and markers for the graves of those members and former members of the United States Armed Forces who have served within the area or areas of military operation in the Korean Theater between June 27, 1950 and July 27, 1954. Except in cases where replacement headstones are necessary, the inclusion of war service as part of the inscription will be neither retroactive nor effective as to headstones furnished previously.

* * * * *

(7) Where a headstone or monument has been erected to an individual interred in a national cemetery and the next of kin desires to inscribe thereon the name and appropriate data pertaining to a deceased spouse, parent, son, daughter, brother, or sister whose remains have not been recovered and who would have been eligible on their own status for burial in a national cemetery by reason of honorable military service in the Armed Forces, either of the United States or of any government allied with the United States, during time of war, approval may be given for cutting such inscription, at no expense to the Government, on the headstone or monument.

(8) Inscriptions on headstones marking graves containing group burials will consist of the names of decedents (in alphabetical order), grade, branch of service, and date of death. Names of decedents will be placed to read from left to right when necessary to use more than one column of names.

(9) The alphabetical section letter and grave number will be incised on the reverse side, near the top of the upright headstone. The alphabetical section letter and grave number on flat granite markers and flat marble markers (furnished as replacements) will be incised on the front (face) of the stone in the upper right corner. The alphabetical section letter and grave number of specially designed stones for group burials will be incised on the front (face) of the stone in the lower right corner.

(10) [Revoked.]

(c) *Private monuments, memorials, and commemorative tablets.* * * *

(11) The act of August 27, 1954 (68 Stat. 880), as amended, authorizes the Secretary of the Interior and the Secretary of the Army to set aside, when available, suitable plots in the national cemeteries under their jurisdiction to honor the memory of members of the Armed Forces missing in action or who died or were killed while serving in such Forces, and whose remains have not been identified, have been buried at sea, or have been determined to be nonrecoverable and, under regulations to be jointly prescribed by them, permit the erection of appropriate markers thereon in honor of any such member or group of members. Requests for authority to erect such markers in national cemeteries under the jurisdiction of the Department of the Army will be submitted to The Quartermaster General, Attn: Memorial Division, for consideration and approval. The cost of such markers and the erection thereof must be made from other than Government funds since the Act of August 27, 1954, as amended, does not provide for the appropriation of funds for this purpose.

[AR 290-5, December 26, 1956] (R. S. 161; 5 U. S. C. 22. Interpret or apply R. S. 4870, as amended, 19 Stat. 99, as amended, 52 Stat. 1233, 62 Stat. 234, 1216; 24 U. S. C. 271, 271a, 278, 279b, 281)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 57-1488; Filed, Feb. 27, 1957; 8:47 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

JAMAICA BAY AND CONNECTING WATERWAYS, N. Y.; INDIAN RIVER, FLA.

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.175 (c) governing the operation of the Long Island Railroad bridge across Broad Channel, Jamaica Bay, New York, is hereby revoked, the bridge having been replaced by a fixed bridge, as follows:

§ 203.175 *Jamaica Bay and connecting waterways, New York.* * * *

(c) *Long Island Railroad bridge across Broad Channel at Broad Channel Station.* [Revoked.]

[Regs., Feb. 8, 1957, ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

2. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.436 (a) governing the operation of bridges over Indian River at Melbourne, Eau Gallie and Cocoa, Florida, is hereby amended to provide morning and afternoon closed periods of one hour duration, respectively, in lieu of the present half-hour periods, to relieve congestion of highway traffic, as follows:

§ 203.436 *Indian River, Fla.; State Road Department of Florida bridges at Cocoa, Eau Gallie and Melbourne.* (a) Except as provided in paragraphs (b) and (c) of this section the owner of or agency controlling these bridges shall not be required to open the drawspans between the hours of 6:45 a. m. and 7:45 a. m., and 4:30 p. m. and 5:30 p. m., Monday through Friday of each week.

[Regs., Feb. 8, 1957, ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 57-1489; Filed, Feb. 27, 1957; 8:47 a. m.]

TITLE 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

Subchapter G—Emergency Operations

[Gen. Order 75 (Revised)]

PART 308—WAR RISK INSURANCE

General Order 75 and all supplements and amendments thereto are hereby revised to read as follows:

Title XII of the Merchant Marine Act, 1936, as amended, 46 U. S. C. 1281–1294 (Public Law 763, 81st Cong., 64 Stat. 773; Public Law 209, 84th Cong., 69 Stat. 440; Public Law 958, 84th Cong., 70 Stat. 984) authorizes the Secretary of Commerce, with the approval of the President, to provide insurance against loss or damage by war risks whenever it appears to the Secretary that such insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. The President, on October 9, 1950, gave the required approval and on December 21, 1950, the Secretary made a finding that, as of any outbreak of war between any of the four great powers (France, Great Britain and/or any of the British Commonwealth of Nations, Union of Soviet Socialist Republics, the United States of America) insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

The Secretary of Commerce delegated authority to the Maritime Administrator to perform the functions vested in the Secretary of Commerce by title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress, except the authority "to find that insurance adequate to the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" which was reserved to the Secretary of Commerce. (Section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (Amended), published as section 5 (a) (2) (iii) in the FEDERAL REGISTER September 15, 1953, 18 F. R. 5518, 5519.)

The Maritime Administrator is prepared to provide war risk insurance specified in sections 1203 (a), (d), (e) and (f) of Public Law 763, 81st Congress for the interim period between the time commercial insurance, subject to the "Automatic Termination Clauses", is automatically terminated through the operation of such clauses and the time a full wartime insurance program is placed in effect. The following rules and regulations for the underwriting of such interim insurance are promulgated:

Subpart A—General

Sec.
308.1 Eligibility of a vessel and its owner for insurance.
308.2 Change in status of a vessel after interim binders have been issued.
308.3 Applications for insurance and payment of binding fees.
308.4 Period of interim binders if insurance thereunder does not attach.
308.5 Time of attachment of insurance.
308.6 Premiums and payment thereof.
308.7 War risk insurance underwriting agency agreement.

Subpart B—War Risk Hull Insurance

308.100 Amounts of insurance for which application may be made.
308.101 Form of application.
308.102 Issuance of interim binder; its terms and conditions.
308.103 Sums which will be insured under interim binder.
308.104 Additional war risk hull insurance.
308.105 Reporting casualties and filing claims.
308.106 Standard form of war risk hull insurance interim binder.
308.107 Standard form of war risk hull insurance policy.

Subpart C—War Risk Protection and Indemnity Insurance

308.200 Amount of insurance for which application may be made.
308.201 Form of application.
308.202 Issuance of interim binder; its terms and conditions.
308.203 Sum which will be insured under interim binder.
308.204 Reporting casualties and filing claims.
308.205 Standard form of war risk protection and indemnity insurance interim binder.
308.206 Standard form of war risk protection and indemnity insurance policy.

Subpart D—Second Seamen's War Risk Insurance

308.300 Amounts of insurance for which application may be made.
308.301 Form of application.
308.302 Issuance of interim binder; its terms and conditions.
308.303 Sums which will be insured under interim binder.
308.304 Reporting casualties and filing claims.
308.305 Standard form of Second Seamen's war risk interim binder.
308.306 Standard form of Second Seamen's War Risk Policy (1955).

Subpart E—War Risk Builder's Risk Insurance

308.400 Eligibility of a vessel for insurance.
308.401 Periods during which a vessel under construction may be insured.
308.402 Amounts for which a vessel will be insured.
308.403 Application for insurance.
308.404 Form of application.
308.405 Issuance of policies; their terms and conditions.
308.406 Premiums and the payment thereof.
308.407 Right of Maritime Administrator to change rate of premium.
308.408 Standard form of War Risk Builder's Risk Insurance policy.
308.409 Reporting casualties and filing claims.

Subpart F—War Risk Cargo Insurance

I—INTRODUCTION

308.500 Authority.
308.501 Cargoes on which coverage is available.
308.502 Additional insurance.
308.503 Rate schedules.
308.504 Definition of territories and possessions.

II—OPEN POLICY WAR RISK CARGO INSURANCE

Sec.
308.505 General.
308.506 Application for an open cargo policy.
308.507 Security for payment of premiums.
308.508 Issuance of an open cargo policy.
308.509 Collateral deposit fund.
308.510 Surety bond.
308.511 Cancellation of open cargo policy.
308.512 Declaration of shipments under open cargo policy.
308.513 Payment of premiums and fees.
308.514 Return premium.
308.515 Payment in event of loss.
308.516 Failure to comply with Clause 21.
308.517 Open cargo policy, Form MA-300.
308.518 Standard optional endorsement No. 1, Form MA-300-A.
308.519 Standard optional endorsement No. 2, Form MA-300-B.
308.520 Standard optional endorsement No. 3, Form MA-300-C.
308.521 Application for open cargo policy, Form MA-301.
308.522 Collateral deposit fund, letter of transmittal, Form MA-302.
308.523 Application for revision of open cargo policy, Form MA-303.
308.524 Application for cancellation of open cargo policy, Form MA-304.
308.525 Application for decrease in amount of cash collateral fund, Form MA-305.
308.526 Certificate for repayment of decrease of collateral deposit fund, Form MA-306.
308.527 Application for return premium, Form MA-307.
308.528 Surety bond A, Form MA-308.
308.529 Surety bond B, Form MA-309.
308.530 Letter requesting increase or decrease in amount of surety bond, Form MA-310.
308.531 Endorsement of surety bond increasing or decreasing amount of coverage, Form MA-311.
308.532 Release of surety bond, Form MA-312.
308.533 Closing report, Form MA-313.
308.534 Certificate to be attached to closing report, Form MA-313-A.
308.535 Certificate to be attached to final closing report, Form MA-313-B.
308.536 Declaration where failure to comply with Clause 21 was inadvertent, Form MA-314.
308.537 Effective date of endorsement.

III—FACULTATIVE WAR RISK CARGO INSURANCE

308.538 General.
308.539 Application for a facultative cargo policy.
308.540 Premiums.
308.541 Issuance of a facultative policy.
308.542 Warranty re thirty-day shipments.
308.543 Cancellation.
308.544 Facultative binder, Form MA-315.
308.545 Facultative cargo policy, Form MA-316.
308.546 Standard optional endorsement No. 1-A, Form MA-316-A.
308.547 Application for return premium, Form MA-317.

IV—GENERAL

308.548 Standard form of underwriting agency agreement for cargo, Form MA-318.
308.549 Application for appointment of cargo Underwriting Agent, Form MA-319.
308.550 Certificate, Form MA-320.
308.551 War Risk insurance clearing agency agreement for cargo.
308.552 Effective date.

AUTHORITY: §§ 308.1 to 308.552 issued under sec. 204, 49 Stat. 1987, as amended, sec. 1209, 64 Stat. 775; 46 U. S. C. 1114, 1289.

SUBPART A—GENERAL

§ 308.1 *Eligibility of a vessel and its owner for insurance.* (a) A vessel is eligible for interim insurance if it is:

(1) An American vessel as defined in section 1201 (a), Public Law 763, 81st Congress; or

(2) A foreign-flag vessel:

(i) Owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress; or

(ii) Owned by a foreign corporation, the majority of the stock of which is owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress or under long-term charter to such a citizen or citizens; and

(*a*) Regularly loading and/or discharging cargo and/or passengers at a port or ports in the continental United States or its territories or possessions, or

(*b*) In a service on a term (not voyage) basis for the sole account of the United States or any department or agency thereof, or

(*c*) In a service which, with respect to the vessel to be insured, is determined by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States.

(b) Other foreign-flag vessels will be insured at the sole discretion of the Maritime Administrator but only when engaged in services found by him to be in the interest of the national defense or the national economy of the United States.

§ 308.2 *Change in status of a vessel after interim binders have been issued.* In the event of change in flag or service of a vessel from an eligible status to a status requiring a finding as to eligibility after any interim binders set forth in §§ 308.106, 308.205, and 308.305 have been issued, interim binders covering such a vessel shall cease to be effective unless a statement as required by § 308.3 is submitted and a finding is made that the vessel is eligible for insurance as provided therein before such change occurs. In the event of the sale, demise charter, requisition, confiscation or total loss of a vessel, or any other change in the status thereof, which, by the terms of a binder causes same to terminate, prompt notice shall be given in writing to the underwriting agent that issued the binder.

§ 308.3 *Applications for insurance and payment of binding fees.* Separate applications, in duplicate, shall be filed for war risk hull insurance, war risk protection and indemnity insurance, and Second Seamen's war risk insurance for each vessel to be covered by such insurance. Applications for insurance on a vessel not in category as described in § 308.1 (a) (1), (2) (i), (2) (ii) (*a*) or (2) (ii) (*b*) shall be accompanied by a signed statement, in quadruplicate, setting forth the dates of the applications, the forms of insurance applied for, the name of the vessel, its flag, the name of the owner or charterer, the service in which the vessel is engaged and the reason such service should be considered to be in the interest of the national defense or the national economy of the United States, which statement shall be deemed to be a part of each application for insurance filed with respect to the vessel. Applications shall be made to the American War Risk Agency, 99 John Street, New York 38, N. Y., underwriting agent for the Maritime Administrator, in the forms set forth in §§ 308.101, 308.201, and 308.301. Applications and the accompanying statements, if any, shall be signed by the owner or charterer of the vessel unless he has filed with the above Underwriting Agent a written designation of a broker or brokers to act for him, in which case the applications may be signed by the designated broker or brokers. A check payable to the order of "Maritime Adm.—Commerce" for the total amount of all binding fees payable by each applicant shall accompany the applications. Binding fees are not returnable unless applications are rejected.

§ 308.4 *Period of interim binders if insurance thereunder does not attach.* All interim binders shall automatically expire at Midnight September 7, 1957, GMT, unless insurance thereunder has attached prior to that date, or such binders have been extended.

§ 308.5 *Time of attachment of insurance.* The war risk insurance to be provided under this part shall attach at such date and hour as the applicant shall designate, but not earlier than the date and hour commercial war risk insurance terminates by reason of the operation of the "forty-eight hour automatic termination clause", whether or not the vessel was covered by such commercial insurance: *Provided,* That if the designated time of attachment does not follow immediately upon the termination of commercial war risk insurance which covers the vessel until moored in port the owner shall warrant that the vessel is in port and in good safety at the time of the attachment of the risk.

§ 308.6 *Premiums and payment thereof.* Promptly upon the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative, the rates of premium for insurance under the interim binders will be fixed and the premiums shall be payable within ten days after receipt of notice of the amounts thereof by the assured. If premiums fixed for any interim binders are not paid within that period, such interim binders shall be null and void and of no effect and insurance thereunder shall not have attached unless the Maritime Administrator agrees otherwise. Premiums shall be paid to the underwriting agent that issued the binders by check payable to the order of "Maritime Adm.—Commerce". In the event that it is subsequently determined that insurance under interim binders did not attach, premiums paid will be refunded by the Maritime Administrator.

§ 308.7 *War risk insurance underwriting agency agreement.* The following is the standard form of underwriting agency agreement which will be executed by the Maritime Administrator and domestic insurance companies, or groups of domestic insurance companies authorized to do a marine insurance business in any States of the United States, appointing such companies or groups of companies as Underwriting Agents to issue binders and policies covering hull, protection and indemnity, and Second Seamen's war risk insurance under Subparts B, C, and D of this part:

Form MA-355 (3-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

UNDERWRITING AGENCY AGREEMENT

This Agreement, made and entered into this ____ day of _____, 195__, by and between the United States of America (herein called the "United States"), acting by the Secretary of Commerce (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and _____, (herein called the "Underwriting Agent"), having an office for the transaction of business at _____, an association of domestic insurance companies (herein called the "Participating Members"), each of which is authorized to do a marine insurance business in a State of the United States.

WITNESSETH

Whereas, pursuant to title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his Underwriting Agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by title XII of the act, except the authority "to find that insurance adequate to the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" which was reserved to the Secretary. (Section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (Amended), published as section 5 (a) (2) (iii) in the FEDERAL REGISTER September 15, 1953, 18 F. R. 5518, 5519); and

Whereas, the Administrator has determined to employ the Underwriting Agent as an underwriting agent in providing war risk insurance as set forth in paragraphs (a), (c), (d), (e), and (f) of section 1203 of the act upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions herein set forth, the parties hereto agree as follows:

1. *Appointment of agent.* The Administrator hereby authorizes the Underwriting Agent, as an agent acting on behalf of the Administrator and not as an independent contractor, to utilize its offices and facilities to make available the insurance which the Secretary is authorized to provide pursuant to paragraphs (a), (c), (d), (e), and (f) of section 1203 of the act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time to the Underwriting Agent by the Administrator. The Underwriting Agent hereby agrees to utilize its offices and facilities to make such insurance available, as agent for the Administrator, and to perform the functions hereinafter provided for to the best of its ability. The Underwriting Agent

may act through its home office, branch offices or agencies which are authorized to write insurance on its behalf.

2. *Duties of agent.* The duties of the Underwriting Agent shall be as follows:

(a) *Receive applications and issue binders and policies.* The Underwriting Agent shall receive applications for insurance, subject to the rates and conditions specified by the Administrator upon forms prescribed by the Administrator. After determining that the applications have been submitted in complete and proper form and are accompanied by remittances in the amount of the premiums required for the insurance applied for, the Underwriting Agent shall countersign binders or policies of insurance, or both binders and policies of insurance, subject to the rules, rates, terms and conditions specified by the Administrator on forms prescribed by the Administrator. The insurer under such policies shall be the United States.

(b) *Keep records.* The Underwriting Agent shall keep a full and complete record of all applications, binders, and policies, and shall also record all premiums, charges or deposits required by the terms of the binders and policies, so that a record may be available at all times to the Administrator, both as to all applications received and all binders and policies issued, and as to all payments made by the assured in connection with such binders and policies.

(c) *Receive money and reports.* The Underwriting Agent shall receive checks made payable to the order of the Maritime Adm.—Commerce for the premiums and charges involved, which checks shall be deposited by the Underwriting Agent in the Federal Reserve Bank nearest to its office, or in such other bank as may be authorized by the Administrator to receive such deposits. The Underwriting Agent shall receive from the bank in which the deposits are made receipts therefor in such number as may be prescribed in instructions to the Underwriting Agent and handle the receipts so received in accordance with such instructions.

(d) *Report monthly.* The Underwriting Agent shall prepare a monthly report, in summary form, of all applications received, and binders and policies issued or cancelled by the Underwriting Agent on a standard form approved by the Administrator, and transmit them, together with receipts for deposits made as above provided, to the Administrator.

(e) *Other reports.* The Underwriting Agent shall prepare and transmit such other reports as may be required by the Administrator.

(f) *Process claims for return premiums.* The Underwriting Agent shall receive from holders of policies issued by such Underwriting Agent any claims for return premiums on a standard form prescribed by the Administrator and shall certify thereon, if such is the fact, that the amounts with respect to which such return is claimed were previously paid and that based upon the statements included in such application by the assured the return premium applied for is payable in accordance with the regulations of the Administrator. Such applications and certifications shall be transmitted promptly to the Administrator.

(g) *Process claims for losses.* The Underwriting Agent shall receive reports of losses on vessels and disbursements (insured pursuant to paragraphs (a) and (c), section 1203 of the act), assemble all pertinent documents and facts relating thereto required to determine the validity of the claims, including the amounts thereof, and submit the same to the Administrator with its recommendation as to payment.

(h) *Help establish advisory committee.* The Underwriting Agent shall, if requested by the Administrator, cooperate with the Administrator to establish and maintain an advisory underwriting committee to consult with and advise the Administrator in connection with specific underwriting problems, subject to the rules, regulations and instructions of the Administrator, and to establish and maintain such other advisory committees as may be deemed necessary from time to time to safeguard the interests of the Administrator, including a loss committee to act as a recipient for information concerning losses and to pass upon any recommendations made by the Underwriting Agent as to losses and payments of claims arising therefrom in excess of an amount to be fixed by the Administrator.

3. *Compensation*—(a) *Fair and reasonable.* The Underwriting Agent shall receive for its services such amount as the Administrator and the Underwriting Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Underwriting Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Underwriting Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator: *Provided, however,* That all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by section 1209 (d) of the act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly.* A statement of the compensation due to the Underwriting Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Underwriting Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Underwriting Agent.

(4) *Standard of performance.* In the discharge of its duties and obligations pursuant to this Agreement, the Underwriting Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Underwriting Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Underwriting Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Underwriting Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Underwriting Agent shall be deemed to include a determination by the Underwriting Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Underwriting Agent.

5. *Writing insurance for own account.* It is understood that the Participating Members of the Association constituting the Underwriting Agent are or may be engaged in writing for their own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by the Underwriting Agent hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Underwriting Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. *Books and records*—(a) *Maintained subject to audit.* The Underwriting Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Underwriting Agent or of the Participating Members thereof, in accordance with regulations made from time to time by the Administrator, and shall at all times be subject to audit and inspection by the Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Underwriting Agent or of the Participating Members thereof in the performance of and involving transactions related to this Agreement.

7. *Act only as agent.* The Underwriting Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Underwriting Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement. The Underwriting Agent may accompany its signature in all binders and policies countersigned by it hereunder with a statement that, in countersigning such binders and policies, it acts solely under the powers conveyed to it by the Administrator and that it does not thereby warrant its authority to accept applications for insurance or its authority to countersign, nor the authority of the Administrator to issue such binders and policies.

8. *Special circumstances*—(a) *Reimbursement of taxes and fees.* In the event that the Underwriting Agent or any Participating Member or Members thereof, after giving notice to the Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any State of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting income taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Underwriting Agent or any Member or Members thereof hereunder, the Administrator shall reimburse the Underwriting Agent and any Participating Member or Members therefor and for any special expenses necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Underwriting Agent or any Participating Member or Members thereof on account of anything done or not done, by the Underwriting Agent or any Participating Member or Members thereof or the Administrator, in connection with the issuance or non-issuance or cancellation of insurance or the acceptance or denial of applications for binders or policies of insurance on behalf of the Administrator or the payment or non-payment of claims for loss or return premium arising thereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Underwriting Agent or any Participating Member or Members thereof be compelled or required to make any payment or incur any expense, the Administrator shall reimburse

the Underwriting Agent or any Participating Member or Members thereof for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Underwriting Agent shall have complied with the standard of performance required thereunder. In any of the foregoing cases, the Underwriting Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as of the date of its execution by the Administrator and shall continue in force until terminated. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Underwriting Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Underwriting Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Underwriting Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member or delegate.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

14. *Participating Members*—(a) *Indebted to United States.* The Participating Members of the association constituting the Underwriting Agent, severally but not jointly and limited each to its participation therein, shall be indebted to the United States for such amounts as the Secretary is entitled to recover from the Underwriting Agent in accordance with the foregoing provisions and, in the event of failure to pay on demand, the Secretary may bring an action or actions in any court in the United States to recover such amount or amounts from the Participating Members, severally but not jointly, on behalf of the United States.

(b) *Change of shares.* Without cancelling this Agreement, the Participating Members of the association constituting the Underwriting Agent may, upon not less than ten (10) days' prior written notice to the Administrator, change their share of participation by agreement among themselves, including the termination of the interests of one Participating Member and the assumption of its share by one or more of the other Participating Members or by the admission of other eligible domestic insurance companies to membership in the association. Any such change of apportionment or termination of participation shall not relieve any Participating Member of its obligations in respect to matters which occurred prior to any change or termination of its interest. Unless the Underwriting Agent is notified in writing by the Administrator, within ten (10) days after receipt of notice from the Underwriting Agent, that the proposed change in participation or termination or assumption is disapproved, such change shall be understood to be acceptable to the Administrator.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
SECRETARY OF COMMERCE,
By: MARITIME ADMINISTRATOR.

(Maritime Administrator)

(Underwriting Agent)

By: ---

Attest:

Attest:

Approved as to form:

(Assistant General Counsel,
Maritime Administration)

I, ---, certify that I am the duly chosen, qualified, and acting Secretary of ---, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that ---, who signed this Agreement on behalf of said association, was then the duly qualified --- of said association; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said association by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the lawful powers of this association.

SUBPART B—WAR RISK HULL INSURANCE

§ 308.100 *Amounts of insurance for which application may be made.* An applicant for war risk hull insurance shall state the amount of insurance desired but any payment for damage to or the total or constructive total loss of the vessel will be made as provided in § 308.103.

§ 308.101 *Form of application.* Applications submitted shall be in strict accordance with the following form:

Form MA-183 (Revised 8-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

APPLICATION FOR WAR RISK HULL INSURANCE

Application is made for War Risk Hull Insurance pursuant to Public Law 763, 81st Congress and in accordance with all provisions of law and subject to all limitations thereof:

Assured ---
Address
Owner ---
Address
Mortgagee, if any, ---
Address
Loss, if any, payable to ---
--- or order.
On ---
(Vessel's name) (Flag)

(Gross tonnage) (Date built)

Sum to be insured $--- subject to the provisions of Public Law 958, 84th Congress, 70 Stat. 984.

To attach, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t. of the day on which such outbreak of war occurs,

such insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter.

Terms and conditions: Subject to form of policy prescribed by the Maritime Administrator, acting for the Secretary of Commerce.

If application is for insurance on a foreign-flag vessel, indicate category. If in category (b) also indicate applicable subpart. Category ( ) ( ).

(a) Owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress;

(b) Owned by a foreign corporation, the majority of the stock of which is owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress or under long-term charter to such a citizen or citizens and

(i) Regularly loading and/or discharging cargo and/or passengers at a port or ports in the continental United States or its Territories or possessions, or

(ii) In a service on a term (not voyage) basis for the sole account of the United States or any department or agency thereof, or

(iii) In a service believed by the concerned owner, charterer, assured and applicant to be in the interest of the national defense or the national economy of the United States.

If this application is for insurance with respect to a foreign-flag vessel not in category (a), (b) (i), or (b) (ii) it shall be accompanied by the statement specified in § 308.3 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations), which statement shall be deemed to be a part of this application.

Binding fee (not returnable unless application is rejected).

$25.00 per vessel, under 500 gross tons.

$100.00 per vessel, 500 gross tons and over.

Check payable to the order of "Maritime Adm.—Commerce" enclosed herewith.

Rate of premium—To be fixed by the Maritime Administrator, acting for the Secretary of Commerce.

Dated _____, 195__.

Applicant _____

Binder to be sent to—

Name _____

Address _____

By _____,

Authorized signature.

(Application, in duplicate, to be submitted to the American War Risk Agency, 99 John Street, New York 38, N. Y.)

§ 308.102 *Issuance of interim binder; its terms and conditions.* Upon acceptance of an application, an interim binder in the form set forth in § 308.106 will be issued and there shall be deemed to be incorporated therein by reference, all of the terms, conditions and warranties contained in the standard war risk hull insurance policy set forth in § 308.107, to the same extent as if such policy were made a part of the binder. The binding fee shall be $25.00 per vessel under 500 gross tons and $100.00 per vessel of 500 gross tons or over.

§ 308.103 *Sums which will be insured under interim binder.* The valuation in the policy for damage to or actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Secretary of Commerce which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 902 (a) at the time of the attachment of the insurance under said policy: *Provided, however,* That in the case of a construction-subsidized vessel, for the period of insurance prior to requisition for title or use, the valuation so determined shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use the valuation so determined shall not exceed the amount which would be payable under section 802 in the case of requisition for title or use: *Provided further,* That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary of Commerce, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary of Commerce and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902 (a) at the time of the attachment of the insurance under said policy: *Provided, however,* That in the case of a construction-subsidized vessel, the valuation determined by the court as such just compensation for any period of insurance prior to actual requisition for title or use of the vessel shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for any period of insurance after actual requisition for use, the valuation determined by the court shall be the amount which would have been payable under section 802 in the case of requisition for title: *And provided further,* That in the event of an election by the insured to reject the stated valuation fixed by the Secretary of Commerce and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading Maritime Activities in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading Maritime Activities in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

§ 308.104 *Additional war risk hull insurance.* Owners or charterers may obtain, on an excess basis, additional war risk hull insurance in such amounts as desired and such insurance shall not inure to the benefit of the Maritime Administrator as underwriter.

§ 308.105 *Reporting casualties and filing claims.* All casualties occurring after insurance under a binder has attached shall be reported promptly to the underwriting agent that issued the binder and all claim documents shall likewise be filed with such underwriting agent, but payment of the amounts due in settlement of claims will be made by the Maritime Administrator.

§ 308.106 *Standard form of war risk hull insurance interim binder.* The following is the standard form of war risk hull insurance interim binder:

Form MA-184 (Revised 8-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

WAR RISK HULL INSURANCE

INTERIM BINDER NO. WRH-

The United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, in consideration of the binding fee and premium provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Public Law 763, 81st Congress, against HULL WAR RISKS only, subject to the conditions stated herein:

Assured_____

Loss, if any, payable to_____or order.

On_____ _____

(Vessel's name) (Flag)

_____ _____

(Gross tonnage) (Date built)

Sum, insured _____ dollars ($ _____) for damage to or actual or constructive total loss of the vessel, herein called the stated valuation: *Provided, however,* That in the case of a construction-subsidized vessel, for the period of insurance prior to requisition for title or use, the stated valuation shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use the stated valuation shall not exceed the amount which would be payable under section 802 of the Merchant Marine Act, 1936, as amended, in the case of requisition for title or use: *Provided further,* That the assured shall have the right within sixty days after the attachment of the insurance under the policy, or within sixty days after determination of the stated valuation by the Secretary of Commerce, whichever is later, to reject the stated valuation, and shall pay, at the rate provided for in the policy, premiums upon such asserted valuation as the assured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the United States in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the assured has not rejected the stated valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed the stated valuation, but if the assured has so rejected the stated valuation, the assured shall be paid as a tentative advance only, 75 per centum of the stated valuation and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902 (a) at the time of the attachment of the insurance under

the policy: *Provided, however,* That in the case of a construction-subsidized vessel, the valuation determined by the court as such just compensation for any period of insurance prior to actual requisition for title or use of the vessel shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for any period of insurance after actual requisition for use, the valuation determined by the court shall be the amount which would have been payable under section 802 of the Merchant Marine Act, 1936, as amended, in the case of requisition for title: *And provided further,* That in the event of an election by the assured to reject the stated valuation and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading Maritime Activities in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading Maritime Activities in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in the policy.

Attaching, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs,

this insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter.

Assured to have privilege of deferring attachment by giving written or telegraphic notice to the Underwriting Agent prior to attachment of risk.

This binder shall automatically expire at midnight, September 7, 1957, G. m. t.

Terms and conditions: There shall be deemed to be incorporated herein all of the terms, conditions and warranties contained in the war risk hull insurance policy set forth in § 308.107 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations) but, to the extent there is inconsistency between such policy and this binder, the terms, conditions and warranties of this binder shall prevail.

Warranted that at the date of issuance of this binder and for and during the term of any insurance attaching hereunder the vessel is (1) an American vessel as defined in section 1201 (a), Public Law 763, 81st Congress or (2) a foreign-flag vessel in the category, including the applicable sub-part of category (b), specified in the application pursuant to which this binder was issued, and if, at any time after insurance attaches under this binder, the vessel shall cease to come within either (1) or (2) above, this binder and insurance provided hereunder shall automatically terminate at the time of such change, without return of binding fee or premium, unless the Maritime Administrator agrees otherwise.

Premium—Rate to be fixed promptly after the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative and premium shall be payable within ten days after receipt of notice of the amount thereof by the assured. If premium is not paid within that period this binder shall be null and void and of no effect and insurance hereunder shall not have attached unless the Maritime Administrator agrees otherwise. Payment shall be made to the Underwriting Agent by check payable to the order of "Maritime Adm.—Commerce."

Privilege is granted to effect, on an excess basis, additional war risk hull insurance, which insurance shall not enure to the benefit of the Maritime Administrator as underwriter.

Claims: Casualties arising after attachment of insurance hereunder shall be reported promptly to the Underwriting Agent and all claim documents shall be likewise filed with such Underwriting Agent but payment of the amounts due in settlement of claims will be made by the Maritime Administrator.

The Underwriting Agent does not, by countersigning this binder or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

UNITED STATES OF AMERICA,
By *Maritime Administrator, acting, for the Secretary of Commerce.*

Countersigned at New York, N. Y., this _____ day of 195__.

AMERICAN WAR RISK AGENCY,
By_____
Authorized Underwriting agent.

_____
Maritime Administrator.

Not valid unless countersigned by an authorized underwriting agent.

§ 308.107 *Standard form of war risk hull insurance policy.* The following is the standard form of war risk hull insurance policy:

Form MA-240 (3-52)

Policy No. H._____

UNITED STATES OF AMERICA

Represented by the Maritime Administrator, acting for the Secretary of Commerce (sometimes hereinafter called the Underwriter), by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof, does make insurance and cause to be insured: _____for account of _____but subject to the following provisions with respect to change of ownership, etc.:

In the event of any change, voluntary or otherwise, in the ownership of the Vessel or if the Vessel be placed under new management or be chartered on a bareboat basis or requisitioned on that basis, then, unless the Underwriter agrees thereto in writing, this Policy shall thereupon become cancelled from time of such change in ownership or management, charter or requisition; provided, however, that in the case of an involuntary temporary transfer by requisition or otherwise, without the prior execution of any written agreement by the Assured, such cancellation shall take place fifteen days after such transfer; and provided further that if the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, such cancellation shall be suspended until arrival at final port of discharge if with cargo or at port of destination if in ballast. This insurance shall not inure to the benefit of any such charterer or transferee of the Vessel, and if a loss payable hereunder should occur between such transfer and such cancellation the Underwriter shall be subrogated to all the rights of the Assured against the transferee, by reason of such transfer, in respect of all or part of such loss as is recoverable from the transferee and in the proportion which the respective amounts insured bear to the insured value. A pro rata daily return of net premium shall be made. The foregoing provisions with respect to cancellation in the event of change in ownership or management, charter or requisition shall apply even in the case of insurance "for account of whom it may concern".

Loss, if any (excepting claims required to be paid to others under the Collision Clause), payable to _____ or order. Sum Insured Hereunder _____ Dollars, at and from the _____ day of _____ 19 ____, _____ time to the _____ day of _____ 19____, _____ time.

Provided, however, Should the Vessel at the expiration of this Policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriter, be held covered at a pro rata monthly premium to her port of destination.

On the Vessel called the _____ (or by whatsoever name or names the said Vessel is or shall be called).

The said Vessel, for so much as concerns the Assured, by agreement between the Assured and the Underwriter in this Policy, is and shall be valued at as follows:

Hull, tackle, apparel, passenger fittings, equipment, stores, ordnance, munitions, boats and other furniture	$_____	
Boilers, machinery, refrigerating machinery and insulation, motor generators and other electrical machinery, and everything connected therewith	_____	$_____

Donkey boilers, winches, cranes, windlasses and steering gear shall be deemed to be a part of the hull and not of the machinery.

Special Conditions and Warranties: Unless physically deleted by the Underwriters, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

F. C. & S. CLAUSE

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time

of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic fission or radioactive force.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

Held covered in case of any breach of warranty as to cargo, trade, locality or date of sailing, provided notice be given and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

The Underwriter to be paid in consideration of this insurance _____ Dollars being at the rate of _____ per cent.

In event of non-payment of premium thirty days after attachment this Policy may be cancelled by the Underwriter upon five days written notice being given the Assured. Such proportion of the premium, however, as shall have been earned up to the time of such cancellation shall be due and payable; but in the event of Total or Constructive Total Loss occurring prior to cancellation full annual premium shall be deemed earned.

To return—

_____ cents percent net for each uncommenced month if it be mutually agreed to cancel this Policy. As follows for each consecutive 30 days the Vessel may be laid up in port, viz:

	Without cargo on board	With cargo on board
1. Under repair	——¢% net.	——¢% net.
2. Not under repair	——¢% net.	——¢% net.

For the purpose of this clause a Vessel loading or discharging cargo shall be considered as "with cargo on board".

Provided always: (a) that in no case shall a return be allowed when the within named Vessel is lying in a roadstead or in exposed and unprotected waters.

(b) that in the event of a return for special trade, or any other reason, being recoverable, the above rates of return of premium shall be reduced accordingly.

And arrival.

In the event of the Vessel being laid up in port for a period of 30 consecutive days, a part only of which attaches to this Policy, it is hereby agreed that the laying up period, in which either the commencing or ending date of this Policy falls, shall be deemed to run from the first day on which the Vessel is laid up and that on this basis the Underwriter shall pay such proportion of the return due in respect of a full period of 30 days as the number of days attaching hereto bear to thirty.

Additional insurances as follows are permitted:

(a) *Disbursements, managers' commissions, profits or excess or increased value of hull and machinery, and/or similar interests however described, and freight (including chartered freight or anticipated freight) insured for time.* A sum not exceeding in the aggregate 25 percent of the insured value of the Vessel.

(b) *Freight or hire, under contracts for voyage.* A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under this section shall be reduced as the freight or hire is earned by the gross amount so earned.

(c) *Anticipated freight if the vessel sails in ballast and not under charter.* A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably estimated on the basis of the current rate of freight at time of insurance, plus the charges of insurance. *Provided, however,* That no insurance shall be permitted under this section if any insurance is affected under section (b).

(d) *Time charter hire or charter hire for series of voyages.* A sum not exceeding 50 percent of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under this section shall be reduced as the hire is earned under the charter by 50 percent of the gross amount so earned but where the charter is for a period exceeding 18 months the sum insured need not be reduced while it does not exceed 50 percent of the gross hire still to be earned under the charter. An insurance under this section may begin on the signing of the charter.

(e) *Premiums.* A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Protection and Indemnity or War &c. Risk insurance) reducing pro rata monthly.

(f) *Returns of premium.* A sum not exceeding the actual returns which are recoverable subject to "and arrival" under any policy of insurance.

(g) *Insurance irrespective of amount.* Against risks excluded by the F. C. & S. Clause, and risks enumerated in the American Institute War and Strikes Clauses and General Average and Salvage Disbursements.

Warranted that no insurance on any interests enumerated in the foregoing sections (a) to (f), inclusive, in excess of the amounts permitted therein and no insurance subject to P. P. I., F. I. A. or other like term, on any interests whatever excepting those enumerated in section (a), is or shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers or Mortgagees. Provided always that a breach of this warranty shall not afford the Underwriter any defense to a claim by a Mortgagee who has accepted this Policy without knowledge of such breach.

Beginning the adventure upon the said Vessel, as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks, and graving docks and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam, motor power or sail; with leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but if without the approval of the Underwriter the Vessel be towed, except as is customary or when in need of assistance, or undertakes towage or salvage services under a pre-arranged contract made by Owners and/or Charterers, the Assured shall notify the Underwriter immediately and pay an additional premium if required but no such premium shall be required for customary towage by the Vessel in connection with loading and discharging. With liberty to discharge, exchange and take on board goods, specie, passengers and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise.

Touching the Adventures and Perils which the said Underwriter is contented to bear and take upon itself, they are of the Seas, Men-of-War, Fire, Lightning, Earthquake, Enemies, Pirates, Rovers, Assailing Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners and of all other like Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Vessel, &c, or any part thereof; excepting, however, such of the foregoing Perils as may be excluded by provisions elsewhere in the Policy or by endorsement. And in case of any Loss or Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said Vessel, &c, or any part thereof, without prejudice to this Insurance, to the Charges whereof the Underwriter will contribute its proportion as provided below. And it is expressly declared and agreed that no acts of the Underwriter or Assured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance also specially to cover (subject to the Average Warranty) loss of or damage to the subject matter insured directly caused by the following:

Accidents in loading, discharging or handling cargo, or in bunkering;

Accidents in going on or off, or while on drydocks, graving docks, ways, gridirons or pontoons;

Explosions on shipboard or elsewhere;

Breakdown of motor generators or other electrical machinery and electrical connections thereto, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull (excluding the cost and expense of replacing or repairing the defective part);

Contact with Aircraft or with any land conveyance;

Negligence of Master, Charterers other than an Assured, Mariners, Engineers or Pilots;

Provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, or any of them. Masters, Mates, Engineers, Pilots or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the Vessel.

In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given in writing to the Underwriter, where practicable, prior to survey, so that it may appoint its own surveyor if it so desires. The Underwriter shall be entitled to decide the port to which a damaged Vessel shall proceed for docking or repairing (the actual additional expense of the voyage arising from compliance with the Underwriter's requirements being refunded to the Assured) and the Underwriter shall also have a right of veto in connection with the place of repair or repairing firm proposed and whenever the extent of the damage is ascertainable the Underwriter may take or may require to be taken tenders for the repair of such damage. In the event of failure to comply with the conditions of this clause

15 per cent shall be deducted from the amount of the ascertained claim.

In cases where a tender is accepted with the approval of the Underwriter, an allowance shall be made at the rate of 30 percent per annum on the insured value for each day or pro rata for part of a day from the time of the completion of the survey until the acceptance of the tender provided that it be accepted without delay after receipt of the Underwriter's approval.

No allowance shall be made for any time during which the Vessel is loading or discharging cargo or bunkering.

Due credit shall be given against the allowance as above for any amount recovered:

(a) In respect of fuel and stores and wages and maintenance of the Master, Officers and Crew or any member thereof allowed in General or Particular Average:

(b) From third parties in respect of damages for detention and/or loss of profit and/or running expenses;

for the period covered by the tender allowance or any part thereof.

Notwithstanding anything herein contained to the contrary, this policy is warranted free from Particular Average under 3 percent, or unless amounting to $4,850, but nevertheless when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, the Underwriter shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found.

Grounding in the Panama Canal, Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above a line drawn from the North Basin, Buenos Aires, to the mouth of the San Pedro River) or its tributaries, or in the Danube or Demerara Rivers or on the Yenikale Bar, shall not be deemed to be a stranding.

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the Average be Particular or General.

No claim shall in any case be allowed in respect of scraping or painting the Vessel's bottom.

The warranty and conditions as to Average under 3 percent or unless amounting to $4,850 to be applicable to each voyage as if separately insured, and a voyage shall commence at the Assured's election when the Vessel either begins to load cargo or sails in ballast to a loading port. Such voyage shall continue until the Vessel has made not more than three passages or not more than two passages with cargo (whichever first occurs) and extend further until the Vessel thereafter begins to load cargo or sails (whichever first occurs), but such extension shall not exceed 30 days in port. A passage shall be deemed to be from the commencement of loading at the first port or place of loading until completion of discharge at the last port or place of discharge, or, if the Vessel sails in ballast, from the port or place of departure until arrival at the first port or place thereafter other than a port or place of refuge or a port or place for bunkering only. Each period in port of 30 days in excess of 30 days between passages shall itself constitute a passage for the purposes of this clause. When the Vessel sails in ballast to effect damage repairs such sailing or passage shall be considered part of the previous passage. In calculating whether the 3 percent or $4,850 is reached, Particular Average occurring outside the period covered by this Policy may be added to Particular Average occurring within such period, providing it occur on the same voyage as above defined, but only that portion of the claim arising within the period covered by this Policy shall be recoverable hereon. A voyage shall not be so fixed that it overlaps another voyage on which a claim is made on this or the preceding or succeeding Policy. Particular Average which would be excluded by the terms of this Policy shall not be included in determining whether the 3 percent or $4,850 is reached.

No recovery for a Constructive Total Loss shall be had hereunder unless the expense of recovering and repairing the Vessel shall exceed the insured value.

In ascertaining whether the Vessel is a Constructive Total Loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of Total or Constructive Total Loss, no claim to be made by the Underwriter for freight, whether notice of abandonment has been given or not.

In no case shall the Underwriter be liable for unrepaired damage in addition to a subsequent Total Loss sustained during the period covered by this Policy.

General Average, Salvage, and Special Charges payable as provided in the contract of affreightment, or failing such provision, or there be no contract of affreightment, payable in accordance with the Laws and Usages of the Port of New York. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

And it is further agreed that in the event of salvage, towage or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership or control of the Vessels) shall be ascertained by arbitration in the manner below provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

When the contributory value of the Vessel is greater than the valuation herein the liability of the Underwriter for General Average contribution (except in respect to amount made good to the Vessel) or Salvage shall not exceed that proportion of the total contribution due from the Vessel that the amount insured hereunder bears to the contributory value; and if because of damage for which the Underwriter is liable as Particular Average the value of the Vessel has been reduced for the purpose of contribution, the amount of the Particular Average claim under this Policy shall be deducted from the amount insured hereunder and the Underwriter shall be liable only for the proportion which such net amount bears to the contributory value.

In the event of expenditure under the Sue and Labor Clause, this Policy shall pay the proportion of such expenses that the amount insured hereunder bears to the insured value of the Vessel, or that the amount insured hereunder, less loss and/or damage payable under this Policy, bears to the actual value of the salved property; whichever proportion shall be less.

If claim for total loss is admitted under this Policy and sue and labor expenses have been reasonably incurred in excess of any proceeds realized or value recovered, the amount payable under this Policy will be the proportion of such excess that the amount insured hereunder (without deduction for loss or damage) bears to the insured value or the sound value of the Vessel at the time of the accident, whichever value was greater.

And it is further agreed that if the Vessel hereby insured shall come into collision with any other Ship or Vessel and the Assured or the Charterers or the Surety in consequence of the insured Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriter will pay the Assured, or the Charterers, or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as its subscription hereto bears to the value of the Vessel hereby insured, provided always that its liability in respect to any one such collision shall not exceed its proportionate part of the value of the Vessel hereby insured. And in cases where the liability of the Vessel has been contested, or proceedings have been taken to limit liability, with the consent in writing of the Underwriter it will also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of Cross-Liabilities as if the Owners or Charterers of each vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Vessels being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the Underwriter; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured, or the Charterers, or the Surety, may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, structures, or any other objects (excepting other Vessels and property thereon), consequent on such collision, or in respect of the cargo, baggage or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim under this clause being made by anyone other than the Owners of the Vessel hereby insured, he shall not be entitled to recover in respect of any liability to which the Owners of the Vessel as such would not be subject, nor to a greater extent than the Owners would be entitled in such event to recover.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this Policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator, acting for the Secretary of Commerce*

---,
Maritime Administrator.

The Underwriting Agent does not, by countersigning this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned at _____ this _____ day of _____ 195__.

By:

---,
Authorized Underwriting Agent.

Form MA-240-A (3-52)

UNITED STATES OF AMERICA

HULL WAR RISK AND STRIKES CLAUSES

Endorsement attached to and made part of policy No. _____. It is agreed that this insurance covers only those risks which would be covered by the attached policy (including running down liability under the Collision Clause) in the absence of the F. C. & S. warranty contained therein but which are excluded by that warranty. This insurance is also subject, however, to the following warranties and additional clauses:

(1) The Adventures and Perils Clause shall be construed as including the risks of piracy, civil war, revolution, rebellion or insurrection or civil strife arising therefrom, floating and/or stationary mines and/or torpedoes whether derelict or not and/or military or naval aircraft and/or other engines of war including missiles from the land and weapons of war employing atomic fission or radioactive force and warlike operations and the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, but excluding arrest, restraint or detainment under customs or quarantine regulations, and similar arrests, restraints or detainments not arising from actual or impending hostilities or sanctions.

(2) This insurance also covers damage to or destruction of the property insured directly caused by strikers, locked out workmen, or persons taking part in labor disturbances or riots or civil commotions or caused by persons acting maliciously, but this paragraph shall not be construed to include or cover any loss, damage or expense caused by or resulting from delay, detention or loss of use.

(3) The Franchise warranty in the attached policy is waived and average shall be payable irrespective of percentage and without deduction of new for old. The provisions of the attached policy with respect to constructive total loss shall apply only to claims arising from physical damage to the insured vessel.

(4) Warranted free of any claim for delay or demurrage and warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured.

(5) Warranted free of any claim based upon loss of or frustration of the insured voyage or adventure caused by arrests, restraints or detainments, of kings, princes, or peoples.

(6) Warranted free from any claim arising from capture, seizure, arrest, restraint, detainment, preemption, confiscation or requisition by the Government of the United States or of the country in which the vessel is owned or registered.

(7) Should the vessel be at sea at the natural expiry of this policy, this insurance shall be extended until midnight, G. m. t., of the day on which the vessel is moored at the next port to which she proceeds and 24 hours thereafter, provided notice be given to the Underwriting Agent as soon as practicable and an additional premium paid, if required.

(8) The "Breach of Warranty" clause in the printed policy is deleted.

(9) Warranted no War Risk Insurance in excess of the amount insured herein, whether for hull, machinery, disbursements, or other similar interests however described, exists or will be placed during the currency of this insurance, except as authorized by the Maritime Administrator, acting for the Secretary of Commerce.

(10) Warranted no cancellation except by mutual consent: *Provided, however,* That if the vessel shall be requisitioned by the United States on a basis whereby the United States provides the war risk insurance, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

(11) For the purpose of determining liability under this policy for General Average contribution or Salvage and sue and labor expenses, the sum insured herein, or as stated in any binder of which this policy is a part, shall be deemed to be the "insured value" and the amount payable for the total loss of the vessel shall be deemed to be the "sound value".

SUBPART C—WAR RISK PROTECTION AND INDEMNITY INSURANCE

§ 308.200 *Amount of insurance for which application may be made.* An applicant for war risk protection and indemnity insurance shall state the amount of insurance desired but such amount shall not exceed $250.00 per gross ton of the vessel.

§ 308.201 *Form of application.* Applications submitted shall be in strict accordance with the following form:

Form MA-185 (Revised 12-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

APPLICATION FOR WAR RISK PROTECTION AND INDEMNITY INSURANCE

Application is made for War Risk Protection and Indemnity Insurance pursuant to Public Law 763, 81st Congress and in accordance with all provisions of law and subject to all limitations thereof:

Assured _____
Address
Owner _____
Address
Mortgagee, if any, _____
Address
Loss, if any, payable to_____or order.
On_____ _____
(Vessel's name) (Flag)
_____ _____
(Gross tonnage) (Date built)
Sum to be insured $_____ but not exceeding $250 per gross ton of the vessel.

To attach, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs,

such insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until Midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter.

Terms and conditions: Subject to form of policy prescribed by the Maritime Administrator, acting for the Secretary of Commerce.

If application is for insurance on a foreign-flag vessel, indicate category. If in category (b) also indicate applicable subpart. Category ( ) ( ).

(a) Owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress;

(b) Owned by a foreign corporation, the majority of the stock of which is owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress or under long-term charter to such a citizen or citizens and

(i) Regularly loading and/or discharging cargo and/or passengers at a port or ports in the continental United States or its territories or possessions, or

(ii) In a service on a term (not voyage) basis for the sole account of the United States or any department or agency thereof, or

(iii) In a service believed by the concerned owner, charterer, assured and applicant to be in the interest of the national defense or the national economy of the United States.

If this application is for insurance with respect to a foreign-flag vessel not in category (a), (b) (i), or (b) (ii) it shall be accompanied by the statement specified in § 308.3 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations), which statement shall be deemed to be a part of this application. Binding Fee (not returnable unless application is rejected). $25.00.

Check payable to the order of "Maritime Adm.—Commerce" enclosed herewith.

Rate of Premium: To be fixed by the Maritime Administrator, acting for the Secretary of Commerce.

Dated _____ 195__.
Applicant _____
Binder to be sent to—
Name _____
Address _____
By _____,
Authorized signature.

(Application, in duplicate, to be submitted to the American War Risk Agency, 99 John Street, New York 38, N. Y.)

§ 308.202 *Issuance of interim binder; its terms and conditions.* Upon acceptance of an application, an interim binder in the form set forth in § 308.205 will be issued and there shall be deemed to be incorporated therein by reference all of the terms, conditions and warranties contained in the standard war risk protection and indemnity insurance policy set forth in § 308.206 to the same extent as if such policy were made a part of the binder. The binding fee shall be $25.00.

§ 308.203 *Sum which will be insured under interim binder.* The sum insured shall be the amount stated in the application, but not in excess of $250.00 per gross ton of the vessel.

§ 308.204 *Reporting casualties and filing claims.* All casualties occurring after insurance under a binder has attached shall be reported promptly to, and all claim documents filed with, the Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C.

§ 308.205 *Standard form of war risk protection and indemnity insurance interim binder.* The following is the standard form of war risk protection and indemnity insurance interim binder:

Form MA-186 (Revised 8-55)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

WAR RISK PROTECTION AND INDEMNITY INSURANCE

INTERIM BINDER NO. WRP & I

The United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, in consideration of the binding fee and premium provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Public Law 763, 81st Congress, against War Risk Protection and Indemnity liabilities only, subject to the conditions stated herein:

Assured _____
Loss, if any, payable to_____
or order.
On_____ _____
(Vessel's name) (Flag)
_____ _____
(Gross tonnage) (Date built)
Sum insured _____ dollars ($_____) but not exceeding $250 per gross ton of the insured vessel.

Attaching, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs,

this insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter;

Assured to have privilege of deferring attachment by giving written or telegraphic notice to the Underwriting Agent prior to attachment of risk.

This binder shall automatically expire at Midnight September 7, 1957, G. m. t.

Terms and conditions—There shall be deemed to be incorporated herein all of the terms, conditions and warranties contained in the war risk protection and indemnity insurance policy set forth in § 308.206 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations) but, to the extent there is inconsistency between such policy and this binder, the terms, conditions and warranties of this binder shall prevail.

Warranted that at the date of issuance of this binder and for and during the term of any insurance attaching hereunder the vessel is (1) an American vessel as defined in section 1201 (a), Public Law 763, 81st Congress or (2) a foreign-flag vessel in the category, including the applicable sub-part of category (b), specified in the application pursuant to which this binder was issued, and if, at any time after insurance attaches under this binder, the vessel shall cease to come within either (1) or (2) above, this binder and insurance provided hereunder shall automatically terminate at the time of such change, without return of binding fee or premium, unless the Maritime Administrator agrees otherwise.

Premium—Rate to be fixed promptly after the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative and premium shall be payable within ten days after receipt of notice of the amount thereof by the assured. If premium is not paid within that period this binder shall be null and void and of no effect and insurance hereunder shall not have attached unless the Maritime Administrator agrees otherwise. Payment shall be made to the Underwriting Agent by check payable to the order of "Maritime Adm.—Commerce".

Claims—Casualties arising after the attachment of insurance hereunder shall be reported promptly to the Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C., and all claim documents shall likewise be filed with such Division.

The Underwriting Agent does not, by countersigning this binder or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

UNITED STATES OF AMERICA,
By *Maritime Administrator, acting for the Secretary of Commerce.*

Countersigned at New York, N. Y., this _____ day of 195__.

AMERICAN WAR RISK AGENCY,
By: _____
Authorized Underwriting Agent.

_____,
Maritime Administrator.

Not valid unless countersigned by an authorized underwriting agent.

§ 308.206 *Standard form of war risk protection and indemnity insurance policy.* The following is the standard form of war risk protection and indemnity insurance policy:

Form MA-241 (3-52)

UNITED STATES OF AMERICA

POLICY NO. P. & I. _____

Represented by the Maritime Administrator, acting for the Secretary of Commerce (sometimes hereinafter called the Underwriter), by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof, and in consideration of the stipulations herein named and of _____ dollars, being premium at the rate of _____, does insure _____ hereinafter called the Assured.

Loss, if any, payable to_____
or order. In the sum of_____
dollars at and from the _____ day of _____, 19____, _____ time until the_____day of _____, 19____, _____time, against the liabilities of the Assured as hereinafter described, and subject to the terms and conditions hereinafter set forth, in respect of the vessel _____
(or by whatsoever other name or names the said vessel is or shall be called).

The Underwriter undertakes to make good to the Assured all such loss and/or damage and/or expense as the Assured shall, as owner of the vessel named herein, have become legally liable to pay and shall pay on account of the liabilities, risks, events and/or happenings herein set forth:

Loss of life, injury and illness. (1) Liability for life salvage, loss of life of, or personal injury to, or illness of, any person, not including, however, unless otherwise agreed by endorsement hereon, liability to an employee (other than a seaman) of the Assured or, in case of his death, to his beneficiaries under any compensation act. Liability hereunder shall also include burial expenses not exceeding $200, where reasonably incurred by the Assured for the burial of any seaman. The term Person as aforesaid shall include any person or, persons carried on the insured vessel.

(a) Insurance hereunder shall not cover any liability under the provisions of Public Law 267, 64th Congress, approved September 7, 1916, as amended, now known as the Federal Employees Compensation Act, or under the provisions of section 2 (c) of Public Law 17, 78th Congress, approved March 24, 1943, as amended.

(b) Insurance hereunder in connection with the handling of cargo for the insured vessel shall commence from the time of receipt by the Assured of the cargo on dock or wharf, or on craft alongside for loading, and shall continue until due delivery thereof from dock or wharf of discharge or until discharge from the insured vessel on to a craft alongside.

Repatriation expenses. (2) Liability for expenses reasonably incurred in necessarily repatriating any member of the crew or any other person employed on board the insured vessel: *Provided, however,* That the Assured shall not be entitled to recover any such expenses incurred by reason of the expiration of the shipping agreement, other than by sea perils, or by the voluntary termination of the agreement. Wages shall be recoverable hereunder only when payable under statutory obligation during unemployment due to the wreck or loss of the insured vessel.

Collision. (3) Liability for loss or damage arising from collision of the insured vessel with another ship or vessel insofar as such liability is excluded from the liabilities insured under the following four-fourths Collision Clause in the United States of America Hull Policy (MA-240): "And it is further agreed that if the Vessel hereby insured shall come into collision with any other Ship or Vessel and the Assured or the Charterers or the Surety in consequence of the insured Vessel being at fault shall become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the Underwriter will pay the Assured, or the Charterers, or the Surety, whichever shall have paid, such proportion of such sum or sums so paid as its subscription hereto bears to the value of the Vessel hereby insured, provided always that its liability in respect to any one such collision shall not exceed its proportionate part of the value of the Vessel hereby insured. And in cases where the liability of the Vessel has been contested, or proceedings have been taken to limit liability, with the consent in writing of the Underwriter it will also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of Cross-Liabilities as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Vessels being left to the deci-

sion of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the Underwriter; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. Provided always that this clause shall in no case extend to any sum which the Assured, or the Charterers, or the Surety, may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, structures, or any other objects (excepting other Vessels and property thereon), consequent on such collision, or in respect of the cargo, baggage or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim under this clause being made by anyone other than the Owners of the Vessel hereby insured, he shall not be entitled to recover in respect of any liability to which the Owners of the Vessel as such would not be subject, nor to a greater extent than the Owners would be entitled in such event to recover."

Provided, however, That insurance hereunder shall not extend to any liability, whether direct or indirect, in respect of the engagements of or the detention or loss of time of the insured vessel.

(a) Claims hereunder shall be settled on the principles of Cross-Liabilities to the same extent only as provided in the four-fourths Collision Clause above mentioned.

(b) Where both vessels are the property, in part or in whole, of the same Owners or Charterers, claims hereunder shall be settled on the basis of the principles set forth in the four-fourths Collision Clause above mentioned.

(c) Claims hereunder shall be separated among the several classes enumerated in this policy and each class shall be subject to the special conditions applicable in respect to such class.

(d) Notwithstanding the foregoing, the Underwriter shall not be liable for any claims hereunder where the various liabilities resulting from such collision, or any of them, have been compromised, settled or adjusted without the written consent of the Underwriter.

Damage caused otherwise than by collision. (4) Liability for loss of or damage to any other vessel or craft, or to property on board such other vessel or craft, caused otherwise than by collision of the insured vessel with another vessel or craft.

(a) Where such other vessel or craft or property on board such other vessel or craft belongs to the Assured, claims hereunder shall be adjusted as if it belonged to a third person; *Provided, however,* That if such vessel, craft or property be insured, the Underwriter shall be liable hereunder only insofar as the loss or damage, but for the insurance herein provided, is not or would not be recoverable by the Assured under such other insurance.

Damage to docks, buoys, etc. (5) Liability for damage to any dock, pier, jetty, bridge, harbor, breakwater, structure, beacon, buoy, lighthouse, cable or to any fixed or movable object or property whatsoever, except another vessel or craft or property on another vessel or craft or on the insured vessel unless elsewhere covered herein.

(a) Where there would be a valid claim hereunder but for the fact that the damaged property belongs to the Assured, the Underwriter shall be liable as if such damaged property belonged to another, but only for the excess over any amount recoverable under any other insurance applicable on the property.

Wreck removal. (6) Liability for costs or expenses of or incidental to the removal of the wreck of the insured vessel if legally liable therefor; *Provided, however,* That:

(a) From such costs and expenses shall be deducted the value of any salvage from or which might have been recovered from the wreck inuring, or which might have inured, to the benefit of the Assured;

(b) The Underwriter shall not be liable for any costs or expenses which would be covered by full insurance under the United States of America Hull Policy (MA-240);

(c) In the event that the wreck of the insured vessel is upon property owned, leased, rented or otherwise occupied by the Assured, the Underwriter shall be liable for any liability for removal of the wreck which would be imposed upon the Assured by law in the absence of contract if the wreck had been upon the property belonging to another, but only for the excess over any amount recoverable under any other insurance applicable thereto.

Cargo. (7) Liability for loss of or damage to or in connection with cargo or other property (except mail or parcel post), including baggage and personal effects of persons other than members of the crew, and not exceeding $100 per person, to be carried, carried or which has been carried on board the insured vessel; *Provided, however,* That no liability shall exist hereunder for:

Specie, bullion, jewelry, etc. (a) Loss, damage or expense incurred in connection with the custody, carriage or delivery of specie, bullion, precious stones, precious metals, jewelry, silks, furs, banknotes, bonds or other negotiable documents, or similar valuable property;

Refrigeration. (b) Loss, damage or expense arising out of or in connection with the care, custody, carriage or delivery of cargo requiring refrigeration, unless the spaces, apparatus, and means used for the care, custody and carriage thereof have been surveyed by a classification or other competent disinterested surveyor under working conditions before the commencement of each round voyage unless otherwise agreed and found in all respects fit, and unless the Underwriter has approved in writing the form of contract under which such cargo is accepted for transportation;

Deviation. (c) Loss, damage or expense arising from any deviation, or proposed deviation, not authorized by the contract of affreightment, known to the Assured in time to insure specifically the liability therefor, unless notice thereof is given to the Underwriter and the Underwriter agrees, in writing, that such insurance is unnecessary;

Stowage in improper spaces. (d) Loss, damage or expense arising with respect to under deck cargo stowed on deck or with respect to cargo stowed in spaces not suitable for its carriage, unless the Assured shall show that every reasonable precaution has been taken by him to prevent such improper stowage;

Misdescription of goods. (e) Loss, damage or expense arising out of or as a result of the issuance of bills of lading which, to the knowledge of the Assured, improperly described the goods or their containers as to condition or quantity;

(f) Loss, damage or expense arising from issuance of clean bills of lading for goods known to be missing, unsound or damaged;

(g) Loss, damage or expense arising from the intentional issuance of bills of lading prior to receipt of the goods described therein, or covering goods not received at all;

(h) Loss, damage or expense arising from delivery of cargo without surrender of order bills of lading;

Freight. (i) Freight on cargo short-delivered, whether or not prepaid or whether or not included in the claim and paid by the Assured: *And provided further,* That:

(j) Liability hereunder shall in no event exceed that which would be imposed by law in the absence of contract;

Protective clauses required in contract of affreightment. (k) Liability hereunder shall be limited to such as would exist if the charter party, bill of lading, or contract of affreightment contained (i) a negligence general average clause in the form hereinafter specified under paragraph (12); (ii) a clause providing that any provision of the charter party, bill of lading, or contract of affreightment to the contrary notwithstanding, the Assured and the insured vessel shall have the benefit of all limitations of and exemptions from liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force; (iii) such clauses, if any, as are required by law to be stated therein; (iv) and such other protective clauses as are generally in use in the particular trade;

Carriage of Goods by Sea Act. (l) When cargo carried by the insured vessel is under a bill of lading or similar document of title subject or made subject to the Carriage of Goods by Sea Act of the United States or a law of any other country of similar import, liability hereunder shall be limited to such as is imposed by said Act or law, and if the Assured or the insured vessel assumes any greater liability or obligation, either in respect of the valuation of the cargo or in any other respect, then the minimum liabilities and obligations imposed by said Act or law, such greater liability or obligation shall not be covered hereunder;

Limit of $500 per package. (m) When cargo carried by the insured vessel is under a charter party, bill of lading, or contract of affreightment not subject or made subject to the Carriage of Goods by Sea Act of the United States or a law of any other country of similar import, liability hereunder shall be limited to such as would exist if said charter party, bill of lading, or contract of affreightment contained a clause exempting the Assured and the insured vessel from liability for losses arising from unseaworthiness provided that due diligence shall have been exercised to make the vessel seaworthy and properly manned, equipped, and supplied, and a clause limiting the Assured's liability for total loss or damage to goods shipped to $500 per package, or in case of goods not shipped in packages, per customary freight unit, and providing for pro rata adjustment on such basis for partial loss or damage. The provisions of clauses (k), (l) and (m) herein may, however, be waived or altered by the Underwriter on terms agreed in writing;

Oral contract. (n) In the event cargo is carried under an arrangement not reduced to writing, the Underwriter's liability hereunder shall be no greater than if such cargo had been carried under a charter party, bill of lading or contract of affreightment containing the clauses referred to herein;

Assured's own cargo. (o) Where cargo on board the insured vessel is the property of the Assured, such cargo shall be deemed to be carried under a contract containing the protective clauses described in clauses (k), (l) and (m) herein; and such cargo shall be deemed to be fully insured under the usual form of cargo policy, and in case of loss of or damage to such cargo the Assured shall be insured hereunder in respect of such loss or damage only to the extent that he would have been if the cargo had belonged to another, but only in the event and to the extent that the loss or damage would not be recoverable from marine insurers under a cargo policy as above specified;

Transportation on land or on another vessel or craft. (p) No liability shall exist hereunder for any loss, damage or expense in respect of cargo or other property, including baggage and personal effects of persons other than members of the crew, being transported on land or on another vessel or craft;

Cargo on dock. (q) No liability shall exist hereunder for any loss, damage or expense in respect of cargo or other property, including baggage and personal effects of persons other than members of the crew, before loading on or after discharge from the insured vessel caused by flood, tide, windstorm, earthquake, fire, explosion, heat, cold, deterioration, collapse of wharf, leaky shed, theft, or pilferage unless such loss, damage or expense is caused directly by the insured vessel, her master, officers or crew.

Fines and penalties. (8) Liability for fines and penalties for the violation of any laws of the United States, or of any State thereof, or of any foreign country, *Provided, however,* That the Underwriter shall not be liable to indemnify the Assured against any such fines or penalties resulting directly or indirectly from the failure, neglect or fault of the Assured or its managing officers to exercise the highest degree of diligence to prevent a violation of any such laws.

Mutiny, misconduct. (9) Liability for expenses incurred in resisting any unfounded claim by the master or crew or other person employed on board the insured vessel, or in prosecuting such person or persons in case of mutiny or other misconduct; not including, however, costs of successfully defending claims elsewhere protected in this policy.

Quarantine expenses. (10) Liability for extraordinary expenses, incurred in consequence of the outbreak of plague, or other disease on the insured vessel, for disinfection of the vessel or of persons on board, or for quarantine expenses, not being the ordinary expenses of loading or discharging, nor the ordinary wages or provisions of crew or passengers; *Provided, however,* That no liability shall exist hereunder if the vessel be ordered to proceed to a port where it is known that she will be subjected to quarantine.

Putting in expenses. (11) Liability for port charges incurred solely for the purpose of putting into land an injured or sick seaman, and the net loss to the Assured in respect of bunkers, insurance, stores and provisions as the result of the deviation.

Cargo's proportion G/A. (12) Liability for Cargo's proportion of General Average, including special charges, so far as the Assured cannot recover the same from any other source: *Provided, however,* That if the charter party, bill of lading or contract of affreightment does not contain the negligence general average clause quoted below, the Underwriter's liability hereunder shall be limited to such as would exist if such clause were contained therein, viz:

Negligence G/A clause. "In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers."

Expenses and law costs. (13) Liability for costs, charges and expenses reasonably incurred and paid by the Assured in connection with any liability insured under this policy, provided that the Assured shall not be entitled to indemnity for the cost or expense of prosecuting or defending any claim or suit unless the same shall have been incurred with the approval in writing of the Underwriter, or the Underwriter shall be satisfied that such approval could not have been obtained under the circumstances without unreasonable delay, or that the expenses were reasonably and properly incurred. The cost and expense of prosecuting any claim in which the Underwriter shall have an interest by subrogation or otherwise shall be divided between the Assured and the Underwriter in proportion to the amounts which they would have been entitled to receive respectively, if the suit should be successful.

(14) Expenses which the Assured may incur under authorization of the Underwriter in the interest of the Underwriter.

GENERAL CONDITIONS AND LIMITATIONS

Prompt notice of claim. (15) In the event of any happening which may result in loss, damage or expense for which the Underwriter may become liable, prompt notice thereof, on being known to the Assured, shall be given by the Assured to the Underwriter, but failure to give such prompt notice because of wartime emergency conditions shall not prejudice this insurance. The Underwriter shall not be liable for any claim not presented to the Underwriter with proper proofs of loss within twenty-four (24) months after payment by the Assured.

Time for suit. (16) In no event shall suit on any claim be maintainable against the Underwriter unless commenced within twenty-four (24) months after the loss, damage or expenses resulting from liabilities, risks, events, occurrences and expenditures specified under this policy shall have been paid by the Assured.

Settlement of claims. (17) The Assured shall not make any admission of liability, either before or after any occurrence, which may result in a claim for which the Underwriter may be liable. The Assured shall not interfere in any negotiations of the Underwriter for settlement of any legal proceedings in respect of any occurrences for which the Underwriter is liable under this policy: *Provided, however,* That in respect of any occurrence likely to give rise to a claim under this policy, the Assured is obligated to and shall take such steps to protect his and the Underwriter's interests as would reasonably be taken in the absence of this or similar insurance. If the Assured shall fail or refuse to settle any claim as authorized or directed by the Underwriter, the liability of the Underwriter to the Assured shall be limited to the amount for which settlement could have been made or, if the amount is unknown, to the amount which the Underwriter authorized.

Defense of claims. (18) Whenever required by the Underwriter, the Assured shall aid in securing information and evidence and in obtaining witnesses and shall cooperate with the Underwriter in the defense of any claim or suit or in the appeal from any judgment, in respect of any occurrence as hereinbefore provided.

Assumed contractual liability. (19) Unless otherwise agreed by endorsement hereon, the Underwriter's liability shall in no event exceed that which would be imposed on the Assured by law in the absence of contract: *Provided, however,* That the Assured's right of indemnity from the Underwriter shall include any loss, damage or expense covered under the provisions of this policy arising as a result of any contract for the employment of tugs where such contract is one which is substantially similar to those customarily in use or in force during the currency of this policy. The Assured's right of indemnity hereunder shall not include any liability for loss, damage or expense arising from collision between the insured vessel and another vessel or craft, other than liability consequent on such collision, (a) for removal of obstructions under statutory powers, (b) for damage to any dock, pier, jetty, bridge, harbor, breakwater, structure, beacon, buoy, lighthouse, cable or similar structures, (c) in respect of the cargo of the insured vessel and (d) for loss of life, personal injury and illness.

Assignment. (20) No claim or demand against the Underwriter shall be assigned or transferred, and no person, other than a receiver of the property or the estate of the Assured, shall acquire any right against the Underwriter without the express consent of the Underwriter: *Provided, however,* That this shall not affect the rights of any assignee under an assignment made by virtue of any governmental order or decree, in which event such assignee shall have and possess all of the rights of its predecessor in assignment.

Subrogation. (21) The Underwriter shall be subrogated to all the rights which the Assured may have against any other person or entity, in respect of any payment made under this policy, to the extent of such payment, and the Assured shall, upon the request of the Underwriter, execute all documents necessary to secure to the Underwriter such rights.

Double insurance. (22) The Underwriter shall not be liable for any loss or damage against which, but for the insurance hereunder, the Assured is or would be insured under existing insurance excepting as provided in paragraph (1) (a) hereof.

Limitation of liability. (23) If and when the Assured under this policy has any interest other than as an owner or bareboat charterer of the insured vessel, in no event shall the Underwriter be liable hereunder to any greater extent than if such Assured were the owner or bareboat charterer and were entitled to all the rights of limitation to which a shipowner is entitled.

Risks excluded. (24) Notwithstanding anything to the contrary contained in this policy, the Underwriter shall not be liable for any loss, damage, or expense sustained, directly or indirectly by reason of:

(a) Loss, damage or expense to hull, machinery, equipment or fittings of the insured vessel, including refrigerating apparatus and wireless equipment, whether or not owned by the Assured;

(b) Cancelment or breach of any charter or contract, detention of the vessel, bad debts, insolvency, fraud of agents, loss of freight, passage money, hire, demurrage, or any other loss of revenue;

(c) Any loss, damage, sacrifice, or expense which would be payable under the terms of the United States of America Hull Policy (MA-240), on hull, machinery, etc., whether or not the insured vessel is fully covered by insurance sufficient in amount to pay such loss, damage, sacrifice or expense;

(d) The insured vessel towing any other vessel or craft, unless such towage was to assist such other vessel or craft in distress to a port or place of safety: *Provided, however,* That this exception shall not apply to claims covered under paragraph (1) of this policy;

(e) For any claim for loss of life, personal injury or illness in relation to the handling of cargo where such claim arises under a contract of indemnity between the Assured and his subcontractor.

F. C. and S. Clause. (25) Notwithstanding anything to the contrary contained in this policy, the Underwriter shall not be liable for or in respect of any loss, damage or expense, sustained by reason of capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat; or sustained in consequence of military, naval or air action by force of arms, including mines and torpedoes or other missiles or engines of war, whether of enemy or friendly origin; or sustained in consequence of placing the vessel in jeopardy as an act or measure of war taken in the actual process of a military engagement, including embarking or disembarking troops or material of war in the immediate zone of such engagement; and any such loss, damage and expense shall be excluded from this policy without regard to whether the Assured's liability therefor is based on negligence or

otherwise, and whether before or after a declaration of war.

(26) Liability hereunder in respect of any one accident or occurrence is limited to the amount hereby insured.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By *Maritime Administrator, acting, for the Secretary of Commerce.*

_____,
Maritime Administrator.

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned at _____ this _____ day of _____ 195___.
By:

_____
Authorized underwriting agent.

Form MA-241-A (3-52)

UNITED STATES OF AMERICA

WAR RISK PROTECTION AND INDEMNITY CLAUSES

Endorsement attached to and made part of Policy No. P. & I _____.

(1) This insurance to cover only the liability of the Assured for those protection and indemnity risks excluded from the Marine Protection and Indemnity Policy, to which these clauses are attached, by the F. C. & S. Clause contained therein.

(2) This insurance also to cover liability of the Assured for (a) strikes, riots and civil commotions and (b) for contractual repatriation expenses of any member of the crew as a result of perils excluded by the aforesaid F. C. & S. Clause.

(3) Claims for which the Underwriter shall be liable under these clauses shall not be subject to any deduction.

(4) The liability of the Underwriter under these clauses in respect of any one accident or series of accidents arising out of the same casualty shall be limited to the sum hereby insured.

(5) In the event of loss or shipwreck of the vessel from any cause prior to the natural expiry of this policy, this insurance shall continue to cover the liability of the Assured to the crew of the insured vessel, subject to its terms and conditions and at an additional premium if so required by the Underwriter, until the crew shall be either discharged or landed at a port or place to which the owners or charterers are obliged to bring them.

(6) Should the vessel be at sea at the natural expiry of this policy, this insurance shall be extended until midnight, G. m. t., of the day on which the vessel is moored at the next port to which she proceeds and 24 hours thereafter provided notice be given to the Underwriter as soon as practicable and an additional premium paid, if required.

(7) Warranted no cancellation except by mutual consent, provided, however, that if the vessel shall be requisitioned by the United States on a basis whereby the United States provides the war risk protection and indemnity insurance, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

(8) Notwithstanding any of the foregoing provisions, all liabilities covered by the Second Seamen's form of policy are excluded from this insurance.

SUBPART D—SECOND SEAMEN'S WAR RISK INSURANCE

§ 308.300 *Amounts of insurance for which application may be made.* An applicant for Second Seamen's war risk insurance shall not state the amount of insurance desired, which shall be as provided in § 308.303.

§ 308.301 *Form of application.* Applications submitted shall be in strict accordance with the following form:

Form MA-187 (Revised 12-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

APPLICATION FOR SECOND SEAMEN'S WAR RISK INSURANCE

Application is made for Second Seamen's War Risk Insurance (1955) pursuant to Public Law 763, 81st Congress and in accordance with all provisions of law and subject to all limitations thereof:

Assured _____
Address

Loss, if any, payable in accordance with applicable provisions of Second Seamen's War Risk Policy (1955).

_____ _____
(Vessel's name) (Flag)

_____ _____
(Gross tonnage) (Date built)

In the amount specified in the Second Seamen's War Risk Policy (1955) or as modified by shipping articles, collective bargaining agreements or other applicable employment agreements which are in effect upon the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative. Upon the happening of said event, the number of crew members and modified benefits payable as of that date will immediately be declared to the Underwriting Agent. Any subsequent changes will be likewise declared.

To attach, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs,

such insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until Midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter.

Terms and conditions: Subject to form of policy prescribed by the Maritime Administrator, acting for the Secretary of Commerce.

If application is for insurance on a foreign-flag vessel, indicate category. If in category (b) also indicate applicable sub-part. Category ( ) ( ).

(a) Owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress;

(b) Owned by a foreign corporation, the majority of the stock of which is owned by a citizen or citizens of the United States as defined in section 1201 (d), Public Law 763, 81st Congress or under long-term charter to such a citizen or citizens, and

(i) Regularly loading and/or discharging cargo and/or passengers at a port or ports in the continental United States or its territories or possessions, or

(ii) In a service on a term (not voyage) basis for the sole account of the United States or any department or agency thereof, or

(iii) In a service believed by the concerned owner, charterer, assured and applicant to be in the interest of the national defense or the national economy of the United States.

If this application is for insurance with respect to a foreign-flag vessel not in category (a), (b) (i), or (b) (ii) it shall be accompanied by the statement specified in § 308.3 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations), which statement shall be deemed to be a part of this application. Binding Fee (not returnable unless application is rejected). $75.00.

Check payable to the order of "Maritime Adm.—Commerce" enclosed herewith.

Rate of Premium: To be fixed by the Maritime Administrator, acting for the Secretary of Commerce.

Dated _____, 195___.
Applicant _____
Binder to be sent to—
Name _____.
Address _____.
By _____,
Authorized Signature.

(Application, in duplicate, to be submitted to the American War Risk Agency, 99 John Street, New York 38, N. Y.)

§ 308.302 *Issuance of interim binder; its terms and conditions.* Upon acceptance of an application, an interim binder in the form set forth in § 308.305 will be issued and there shall be deemed to be incorporated therein by reference all of the terms, conditions and warranties contained in the Second Seamen's War Risk Policy (1955) set forth in § 308.306 to the same extent as if such policy were made a part of the binder. The binding fee shall be $75.00.

§ 308.303 *Sums which will be insured under interim binder.* The sums insured are the amounts specified in the Second Seamen's War Risk Policy (1955) or as modified by shipping articles, collective bargaining agreements or other applicable employment agreements which are in effect upon the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative. Upon the happening of said event, the number of crew members and modified benefits payable as of that date shall be declared immediately to the underwriting agent that issued the binder. Any subsequent changes shall be likewise declared.

§ 308.304 *Reporting casualties and filing claims.* All casualties occurring after insurance under a binder as attached shall be reported promptly to, and all claim documents filed with, the Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C.

§ 308.305 *Standard form of Second Seamen's war risk interim binder.* The following is the standard form of Second Seamen's war risk interim binder:

Form MA-188 (Revised 8-55)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

SECOND SEAMEN'S WAR RISK INSURANCE (1955)

INTERIM BINDER NO. SSWR

The United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, in consideration of the binding fee and premium provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Public Law 763, 81st Congress, against Second Seamen's War Risk liabilities only, subject to the conditions stated herein:

Assured _____
Loss, if any, payable in accordance with applicable provisions of Second Seamen's War Risk Policy (1955).

_____ _____
(Vessel's name) (Flag)

_____ _____
(Gross tonnage) (Date built)

Sums insured: The amounts specified in the Second Seamen's War Risk Policy (1955) or as modified by shipping articles, collective bargaining agreements or other applicable employment agreements which are in effect upon the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative. Upon the happening of said event the number of crew members and modified benefits payable as of that date shall immediately be declared to the Underwriting Agent. Any subsequent changes shall be likewise declared and additional premium paid, if required.

Attaching, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics, the United States of America).

At and from 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs:

Nevertheless should the vessel:

(A) Be at sea when such outbreak of war occurs, or

(B) Being in a port when such outbreak of war occurs depart therefrom as a measure of safety in respect of an insured peril within 48 hours from midnight, G. m. t., of the day on which such outbreak of war occurs.

this insurance shall not attach until the expiry of 24 hours after midnight, G. m. t., of the day on which the vessel is moored at the next port to which the vessel proceeds.

To: Thirty (30) days from date of attachment, nevertheless should the vessel be at sea on the date of expiration the insurance shall be extended, at a rate to be fixed by the Maritime Administrator, acting for the Secretary of Commerce, until Midnight, G. m. t. of the day on which the vessel is moored at the next port to which she proceeds and for twenty-four hours thereafter;

Assured to have privilege of deferring attachment by giving written or telegraphic notice to the Underwriting Agent prior to attachment of risk.

This binder shall automatically expire at Midnight, September 7, 1957, G. m. t.

Terms and conditions: There shall be deemed to be incorporated herein all of the terms, conditions and warranties contained in the Second Seamen's War Risk Policy (1955) set forth in § 308.306 of Maritime Administration General Order 75 (Part 308, Title 46, Code of Federal Regulations) but, to the extent there is inconsistency between such policy and this binder, the terms, conditions and warranties of this binder shall prevail.

Warranted that at the date of issuance of this binder and for and during the term of any insurance attaching hereunder the vessel is (1) an American vessel as defined in section 1201 (a), Public Law 763, 81st Congress or (2) a foreign-flag vessel in the category, including the applicable sub-part of category (b), specified in the application pursuant to which this binder was issued, and if, at any time after insurance attaches under this binder, the vessel shall cease to come within either (1) or (2) above, this binder and insurance provided hereunder shall automatically terminate at the time of such change, without return of binding fee or premium, unless the Maritime Administrator agrees otherwise.

Premium: Rate to be fixed promptly after the happening of the event causing the "Automatic Termination Clauses" of any war risk policies to become operative and premium shall be payable within ten days after receipt of notice of the amount thereof by the assured. If premium is not paid within that period this binder shall be null and void and of no effect and insurance hereunder shall not have attached unless the Maritime Administrator agrees otherwise. Payment shall be made to the Underwriting Agent by check payable to the order of "Maritime Adm.—Commerce".

Claims: Casualties arising after the attachment of insurance hereunder shall be reported promptly to the Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C., and all claim documents shall likewise be filed with such Division.

The Underwriting Agent does not, by countersigning this binder or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agency by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

UNITED STATES OF AMERICA,
By Maritime Administrator, acting for the Secretary of Commerce.

Countersigned at New York, N. Y., this _____ day of 195__.

AMERICAN WAR RISK AGENCY,
By _____
Authorized Underwriting Agent.

_____,
Maritime Administrator.

Not valid unless countersigned by an authorized underwriting agent.

§ 308.306 (a) *Standard form of Second Seamen's War Risk Policy (1955).* The following is the standard form of Second Seamen's War Risk Policy (1955):

Form MA-242 (8-55)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION

SECOND SEAMEN'S WAR RISK POLICY

(1955 Standard Form)

Crew Life, Disability, Loss of Effects, and Detention — No. SSWR _____ Date _____

Total number of men insured for life and injury _____ for $_____ each
Total amount insured, life or injury _____ $_____ Rate ___% Premium $_____
Total amount insured, personal effects _____ $_____ Rate ___% Premium $_____
Total amount annual wages and emergency wages _ $_____ Rate ___% Premium $_____
Total premium _____ $_____

The United States of America (herein called the "Underwriter"), represented by the Maritime Administrator (herein called "Administrator"), acting for the Secretary of Commerce, in consideration of the payment by _____ (herein, for identification purposes only, called the "Operator") of a premium of $_____, and in accordance with applicable provisions of law and subject to all limitations thereof, particularly title XII, Merchant Marine Act, 1936, as amended, insures the master, officers and crew, as hereinafter set forth, of the vessel _____ (Official No. _____), during the period described herein commencing on or about ____ against loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided), from the perils and causes hereinafter stated, payable in case of claim in funds current in the United States in accordance with the following schedules and as hereinafter stated.

SCHEDULE 1—LOSS OF LIFE

Master, officers and crew, each _____ $5,000

The amount for which each person is covered by this schedule is the principal sum.

SCHEDULE 2—DISABILITY, INCLUDING DISMEMBERMENT AND LOSS OF FUNCTION

For disability proximately caused by the risks and perils insured against herein, and which arises within ninety days from the date of the happening of such risks and perils, and for dismemberment and loss of function caused by the risks and perils insured against herein, and which result from such a disability or otherwise occur within ninety days from the happening of such risks or perils, the Underwriter will pay to the insured the benefits set forth in the stipulations and conditions.

SCHEDULE 3—CREW EFFECTS

For loss of or damage to the personal effects of the master, officers or members of the crew proximately caused by the risks and perils insured against herein, the Underwriter will pay the amount set forth in the Stipulations and Conditions for the loss of or damage to said effects during the entire period of this policy as hereinafter set forth, and for the loss of or damage to effects proximately caused by the risks and perils insured against herein, purchased or otherwise acquired during the policy to replace effects lost or damaged by the risks and perils insured against herein, the Underwriter will pay not exceeding $50.00 for each such loss or damage.

SCHEDULE 4—DETENTION AND REPATRIATION BENEFITS

For detention of the master, officers or members of the crew during the period covered by this policy, and under other situations hereinafter provided, the Underwriter will pay benefits to the insured or for his or

their account, as set forth in the stipulations and conditions.

This policy is made and accepted subject to the foregoing and to the following:

STIPULATIONS AND CONDITIONS

Art.
1. Persons insured.
2. Additional insurance.
3. Risks and perils.
4. Period of coverage.
5. Extension of period of coverage.
6. Payment for loss of life.
7. Beneficiaries of insurance for loss of life.
8. (A) Designation and change of beneficiary; (B) continuing designation.
9. Claims.
10. Time for payment of insurance for loss of life.
11. Proof of death.
12. Disability and dismemberment.
13. Physical examination.
14. Personal effects defined.
15. Amount of payment for loss of, or damage to, personal effects.
16. Death of an insured prior to payment for loss of or damage to personal effects.
17. Detention and repatriation benefits.
18. Payment constituting a discharge.
19. Nonassignability.
20. Amount permitted to be paid agents or attorneys.
21. Notice of loss and claim.
22. Limitation of suit.
23. Deviation and change of voyage.
24. "Administrator" defined.
25. Multiple claims against the United States.
26. Amendments and modifications.
27. Payment of premium and cancellation.
28. Extension.

ARTICLE 1. *Persons insured.* The persons insured by this policy are the master, officers and crew of the vessel described on the face of this policy. Except as to merchant seamen, membership in the vessel's gun crew shall not of itself constitute an individual a member of the crew of the vessel, as that phrase is used herein. Any person or persons insured under any other or similar policy, including the Second Seamen's War Risk Policy (1952) insuring against loss of life or disability (including dismemberment and loss of function) or loss of or damage to personal effects or detention (including the occurrence of other situations hereinafter provided) shall not to the extent of such prior coverage, be entitled to coverage under this policy while such other insurance is in force and effect.

ART. 2. *Additional insurance.* In the event that any person is employed as a master or officer or member of the crew of said vessel after the commencement of the voyage, the amount of the premium shall be increased proportionately, provided, however, that the failure to pay such additional premium shall not affect the additional coverage.

ART. 3. *Risks and perils.* The insurance is for loss of life, disability (including dismemberment and loss of function) loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided) of the insured, directly and proximately caused by risks of war and warlike operations, including capture, seizure, destruction by men-of-war sabotage, piracy takings at sea, arrests, restraints and detainments, acts of kings, princes and peoples in the prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, scuttling to prevent capture, aerial bombardment, or, attempts at, or measures taken in defense of, all of the foregoing acts, floating or stationary mines, torpedoes, whether derelict or not, collision caused by failure, in compliance with wartime regulations, of said vessel or any vessel with which she is in collision, to show the usual full peacetime navigation or anchorage lights, stranding caused by the absence of lights, buoys, or similar peacetime aids to navigation consequent upon wartime regulations, stranding caused by the failure of said vessel to employ a pilot in waters where a pilot would ordinarily be employed in peacetime, but in which the employment of a pilot is dispensed with in compliance with military, naval or other governmental orders, or with a view to avoiding imminent enemy attack (for the purposes of the foregoing, the failure to show lights, the absence of lights, buoys, etc., and the failure to employ a pilot shall be presumed to be the cause of the collision or stranding unless the contrary be proved, and stranding shall include sinking consequent upon stranding or contact with any part of the land) collision with another vessel in the same convoy or collision with any military or naval vessel, that is to say, a vessel manned by and under the control of military or naval personnel and designed to be employed primarily in armed combat service, stranding, collision or contact with any external substance (including ice, but excluding water) as a result of deliberately placing the vessel in jeopardy, in compliance with military, naval or other governmental orders in order to avoid imminent enemy attack, or as an act or measure of war taken in the actual process of embarking or disembarking troops or loading or unloading material of war.

The fact that a vessel, or any vessel with which such vessel is in collision, is carrying troops or military or other supplies, or is proceeding to or from a war base, or is manned or operated by military or naval personnel, shall not alone be sufficient to include in this policy any claim which is not included by the foregoing terms of this article.

The insurance is also for loss of life, disability (including dismemberment and loss of function) loss of or damage to personal effects, and detention (including the occurrence of other situations hereinafter provided) of the insured, directly and proximately resulting from stranding, sinking, or break-up of the vessel, explosion or fire causing loss of or substantial damage to the vessel, or collision by the vessel or contact with any external substance (including ice, but excluding water) irrespective of whether the same are caused by risks of war or warlike operations or by marine risks and perils.

The word "vessel" shall include any waterborne conveyance used to transport the insured to and from the vessel on which he is employed, and shall also include any airborne conveyance used to transport the insured pursuant to instructions or permission of the Maritime Administration or its agents.

ART. 4. *Period of coverage.* The period of coverage for each person covered hereunder is

From the time such person signs the articles or enters into a contract of employment for the voyage of the aforesaid vessel, or, if already on articles for a series of voyages or period of time, from the inception of the aforesaid voyage (i. e., when the vessel is ready to begin the loading of cargo for the aforesaid voyage or to sail in ballast) or, if employed subsequent to the commencement of the voyage, from the time of such employment

Until such person shall be returned to a place within the continental United States, excluding Alaska, including any period of capture or internment,

Unless sooner terminated by desertion, discharge, accepting employment on another vessel for a purpose other than to be repatriated, or the refusal without good cause to return to the continental United States, excluding Alaska, from any place outside thereof, in any of which events the coverage under this policy shall be at an end. (The term "discharge," as used in this paragraph, does not include instances in which the insured leaves the vessel for medical or hospital treatment or for other causes deemed good and sufficient in the opinion of the Administrator.)

ART. 5. *Extension of period of coverage.* If the insured returns to the continental United States, excluding Alaska, on a vessel which touches or stays at a place or places within the continental United States, excluding Alaska, other than the place of termination of the voyage and the vessel thence proceeds to such place of termination, the period of coverage in respect to each person covered hereunder who continues to be on board such vessel is extended to the termination of the voyage.

ART. 6. *Payment for loss of life.* The amount of the payment for loss of life shall be the principal sum stated on the face of this policy, subject, however, to any deductions or additions hereinafter contained.

Payment for loss of life shall be made in a lump sum except that when—

(a) In the opinion of the Administrator conclusive proof of death is not present, or

(b) The insured at the time of designating a beneficiary or beneficiaries requests on the form provided therefor that the amount payable for the loss of life be paid in installments, or

(c) The beneficiary or beneficiaries request in writing that the payment for loss of life be made in installments.

payment for loss of life may, in the discretion of the Administrator, be made in monthly installments not exceeding twenty-four, in which event no interest is to be added or paid. By requesting payment in installments, the insured and the beneficiary or beneficiaries agree on behalf of themselves, their heirs, executors and administrators to be bound by the provisions of paragraph B, article 7 hereof, as well as all other provisions contained herein. The beneficiary or beneficiaries may at any time upon written request obtain a lump sum payment of the entire amount yet unpaid if payment is being made in installments pursuant to the written request of the beneficiary or beneficiaries. If payment has been commenced in installments and the principal sum is not yet exhausted, the Administrator, in his sole discretion and at any time may direct that payment of the balance of the principal sum be paid in a lump sum or in installments of different or varying amounts, provided, however, that all of the principal sum be paid within twenty-four months from the time that the first payment is made.

If any payments are made under article 12 hereof, the total amount of such payments shall be deducted from the amount of the principal sum payable under this policy for loss of life.

If the personal effects of an insured are lost or damaged under circumstances where payment would be due under the terms hereof to said person for such loss or damage and said person either before or after such loss or damage dies, his death being proximately caused by the risks and perils insured against herein, the amount which would have been payable for the loss of or damage to such personal effects had he survived shall be added to the principal sum hereof and shall be payable to the beneficiary of the insurance for loss of life.

ART. 7. *Beneficiaries of insurance for loss of life.* A. The insurance shall be payable only to a lawful widow or widower, child (the latter term including a posthumous child, a child legally adopted by the insured, and, if designated, a child in relation to whom the insured stood in *loco parentis* and a step-child or acknowledged illegitimate child) parent (including a step-parent, parent by adoption and, if designated, a person who stood in the place of a parent to the insured) brother or sister (including, if

designated, step-brothers or step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption), grandparents, grandchildren, and, if designated, nephews, nieces, aunts or uncles, of the insured.

(1) The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes above provided, and shall, in the manner hereinafter described, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the above classes. A person or persons so designated shall be known as the primary beneficiary or beneficiaries.

(2) The insured shall have the right also to designate any other person or persons, but only within the above classes, to whom the insurance shall be paid if the beneficiary or beneficiaries designated shall die before the insurance or any portion thereof shall be paid. A person or persons so designated shall be known as the contingent beneficiary or beneficiaries.

(3) If the insured fails to designate a beneficiary or if the beneficiary or beneficiaries, whether primary or contingent, die before the insurance or any portion thereof shall be paid, the insurance will, subject to the provisions of paragraph B hereof, be paid to the beneficiary or beneficiaries within the following classes and in the order named:

(a) If the insured shall be survived by a lawful widow or widower but without any child of him or her surviving, 100 percent to such widow or widower.

(b) If the insured shall be survived by a lawful widow or widower and a child or children of him or her surviving, 50 percent to the widow or widower and 50 percent to the child or children in equal shares.

(c) If the insured shall have no lawful widow or widower of him or her surviving but shall have a child or children of him or her surviving, 100 percent to the child or children in equal shares.

(d) If there shall be no lawful widow or widower or children of the insured of him or her surviving, 100 percent to the parent or parents of the insured in equal shares.

(e) If there shall be no lawful widow or widower, child or parent of him or her surviving, 100 percent to the brothers, sisters, grandparents and grandchildren of the insured in equal shares.

The persons in these classes shall be known as the schedule beneficiaries. As used in this subdivision (3) the term "child" includes a posthumous child and a child legally adopted by the insured, and the term "parent" includes a step-parent and a parent by adoption.

B. The right of any beneficiary to payment of the insurance, or any unpaid installment thereof, shall be conditioned upon his or her being alive to receive payment. No person shall have a vested right to any such insurance or any installment of any such insurance. No insurance shall be paid to the heir or heirs or executors or administrators of the insured or of any beneficiary.

Any insurance or any installment thereof not paid to a primary beneficiary because of his or her death shall be paid to the schedule beneficiary or beneficiaries first or next entitled to priority as hereinabove provided, unless a contingent beneficiary has been designated, in which event payment shall be made to the contingent beneficiary. Any such insurance or any installment thereof not paid to a contingent beneficiary because of his or her death shall be paid to the schedule beneficiary or beneficiaries first or next entitled to priority as hereinabove provided. If, however, the insured has designated more than one primary beneficiary or more than one contingent beneficiary and if such a primary beneficiary or contingent beneficiary dies before the insurance or an installment thereof, to which he or she may otherwise be entitled, is paid, such insurance or installment thereof shall be paid to the surviving primary or contingent beneficiary, as the case may be.

Any payments of insurance made to a person represented by the insured to be within the permitted classes of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligation of the United States under this insurance policy.

ART. 8. A. *Designation and change of beneficiary.* The designation of a beneficiary or the change in a designation of beneficiary shall be in writing upon a form or forms and in a manner prescribed by the Administrator, signed by the insured, witnessed either by the Shipping Commissioner or a licensed officer of the vessel, and shall contain the name, address and relationship of the beneficiary to the insured. No designation of a beneficiary and no change of a beneficiary shall be valid unless the instrument containing the designation or change is received by the Administrator at his office in the General Accounting Office Building, 441 G Street NW., Washington 25, D. C.. *Provided, however* That the instrument when received shall be considered as valid as of the time of its execution. Whenever it shall appear to the satisfaction of the Administrator that unusual circumstances existed preventing or substantially preventing the designation or change of beneficiary in the manner or form hereinabove set forth and that the interests of justice would be served, he may waive or disregard the failure to comply with such manner and form and recognize as valid an act intended as a designation or a change of beneficiary. The recognition as valid by the Administrator of such an act shall be conclusive and binding upon all persons and payment or payments pursuant thereto shall be a pro tanto discharge of the obligation of the United States under this policy.

B. *Continuing designation.* As to any individual insured under the Second Seamen's War Risk Policy form as amended or changed from time to time, the beneficiary or beneficiaries first designated by such insured to receive the proceeds of the insurance provided by such form shall (subject to the limitations of paragraph B, article 7 hereof) if properly designated, continue to be the beneficiary or beneficiaries of any subsequent insurance provided by such form without further designation unless and until such initial designation is effectively revoked or changed. In the event of an effective revocation unaccompanied by a new designation, the insurance proceeds shall be disposed of in accordance with the provisions of paragraph A, subdivision (3) article 7, hereof. In the event of an effective change of beneficiary or beneficiaries, the new beneficiary or beneficiaries so designated shall for all purposes, including the purposes of this paragraph, be considered as the initial designee or designees, and such designation shall continue to be effective as to all insurance provided by this form of policy until revoked or changed. Subsequent revocations and changes shall for all purposes be treated as would be the preceding revocations or changes, if any.

ART. 9. *Claims.* No claim for insurance for loss of life shall be recognized unless presented in writing to the underwriter. Any payment or payments of the insurance or the installments thereof made prior to the presentation of claim shall be conclusively deemed to have been properly made under this policy and in complete discharge of the obligation of the United States under this policy to the extent thereof.

ART. 10. *Time for payment of insurance for loss of life.* Unless extended by the provisions hereinafter contained, payment of the insurance for loss of life shall be made within ninety days after the death of the insured is established in a manner satisfactory to the Administrator, but payment may be made prior to the expiration of such ninety days at the discretion of the Administrator. The time for payment may be extended without penalty or interest for that period of time consumed by the Administrator in establishing the identity or the location of the beneficiary or beneficiaries, and should any conflicting claims for payment be presented to the Administrator, payment of the insurance may be withheld and the time for payment thereof extended without any penalty or obligation to pay interest until such claims are duly adjudicated or otherwise withdrawn, settled or compromised to the satisfaction of the Administrator.

ART. 11. *Proof of death.* The time and facts of death of any insured shall be established in a manner satisfactory to the Administrator; and his determination of the time and facts of death shall be binding and conclusive against all persons for all purposes of this policy. If, however, payment of a part of the insurance for loss of life has been made and it appears that the insured is alive, payment of the balance of the insurance for loss of life shall not be made, but the payments of insurance in whole or in part theretofore made shall not be recovered, except where such payments were induced by wilful misrepresentation or fraud either by the beneficiary or any other person. The part so paid shall, however, be a discharge to the extent thereof of any other obligation under this policy, including the obligation to pay benefits under article 17 hereof, to the insured or any other person.

ART. 12. *Disability and dismemberment—A. Disability.* "Disability" as that term is used in this policy means incapacity because of injury proximately caused by the risks insured against herein which necessarily and continuously prevents the insured from performing any and every kind of duty pertaining to his occupation at the time of injury.

(1) If an insured suffers disability he shall be paid benefits at the rate of $150 a month, provided, however, that during any part of such period when the insured is hospitalized he shall be paid benefits at the rate of $100 a month, beginning with his return to the continental United States, excluding Alaska, until the Administrator determines that the disability has ceased or until a total of $5,000 is paid, whichever first occurs.

(2) If the Administrator determines at any time during the period such monthly benefits are payable that the insured has received maximum medical treatment for such disability and that such disability is, therefore, permanent in quality (loss of both hands, or both arms, or both feet, or both legs, or both eyes, or combination of any two thereof, will be conclusively presumed by the Administrator to constitute a disability permanent in quality) he shall notify the insured of such facts and the insured shall have the option of

(a) Continuing to receive such monthly benefits at the rate of $150 a month or $100 a month, as the case may be, until the aggregate of all the monthly benefits paid to him both before and after such determination total $5,000, or

(b) Receiving in a lump payment the sum of $5,000 less the total of the monthly benefits paid to him prior to such determination.

(3) In the event the insured elects after such determination to accept payments for such disability under subdivision (2) (a) hereof and if when the total of $5,000 has been paid him as therein provided, the insured claims in writing, and establishes to the satisfaction of the Administrator, that because of the same injury he is incapable of performing, for remuneration or profit, any work or engaging in any business or occupation, then he shall be paid further benefits at the rate of $150 a month or $100 a month, as the case may be, until the Ad-

ministrator determines such incapacity has ceased or until a total of $2,500 is paid, whichever first occurs.

B. *Dismemberment, including loss of function.* If the Administrator determines that the insured, as a proximate result of the risks insured against herein, has suffered a dismemberment or loss of function of the type set forth below, not, however, amounting to disability which the Administrator determines to be permanent in quality, the Underwriter will pay to the insured additional benefits measured by the following percentages of the principal sum. Such benefits shall be in addition to the benefits paid under subdivision (1), paragraph A hereof, but the aggregate of such benefits for disability, dismemberment, and loss of function shall not exceed the principal sum.

(1)

Member lost:	Percent
(a) Arm	65
(b) Leg	65
(c) Hand	50
(d) Foot	50
(e) Eye	45
(f) Thumb	15
(g) First finger	10
(h) Great toe	9
(i) Second finger	5
(j) Third finger	5
(k) Toe other than great toe	2½
(l) Fourth finger	2½

(m) Loss of hearing: For complete loss of hearing of one ear, 12½ percent; for the complete loss of hearing of both ears, 50 percent.

(n) Phalanges: For loss of more than one phalange of a digit, the same as the loss of the entire digit; for loss of the first phalange one-half the loss of the entire digit.

(o) Amputated arm or leg: For an arm or leg, if amputated at or above the elbow or the knee, the same as for the loss of the arm or leg; if amputated between the elbow and the wrist or the knee and the ankle, the same as for the loss of a hand or foot.

(p) Binocular vision or per centum of vision: For loss of binocular vision or for eighty percent or more of the vision of an eye shall be the same as for loss of the eye.

(q) Two or more digits: for loss or loss of use of two or more digits, or one or more phalanges of two or more digits, or a hand or foot, may be proportioned to the loss of use of the hand or foot occasioned thereby but shall not exceed the payment for loss of a hand or foot.

(r) Total loss of use: for permanent total loss of use of a member shall be the same as for loss of the member.

(s) Partial loss or loss of use: payment for permanent partial loss or loss of use of a member may be for proportionate loss of the member or loss of use of the member.

(t) Disfigurement: proper and equitable payment for serious facial or head disfigurement, not to exceed 50 percent.

(u) Total or partial loss or loss of use of more than one member or parts of members. In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in subdivision (a) to (t) both inclusive, hereof, but not amounting to permanent total disability, payment shall be made for the loss or loss of use of each such member or part thereof; however, not exceeding the principal sum, and except that where the injury affects only two or more digits of the same hand or foot, subdivision (q) hereof shall apply.

(2) The amount determined by the Administrator to be due the insured for dismemberment or loss of function shall

(a) If $750 or less, be paid the insured in a lump sum as soon as practicable.

(b) If more than $750, be paid, at the option of the insured, in a lump sum or in monthly installments of $150 or $100, as the case may be, beginning with the month next succeeding the last monthly payment made for disability pursuant to the provisions of subdivision (1), paragraph A hereof, or as soon thereafter as is practicable. The insured shall notify the Administrator in writing of the desired method of payment immediately upon receipt of the Administrator's determination that the insured is entitled to payment for dismemberment or loss of function under this paragraph. Should the Administrator not receive such written notice within thirty days, it shall be conclusively presumed that the insured desires payment in a lump sum and the Underwriter will act accordingly.

(3) If the insured elects under subdivision (2) (b) hereof to accept payment for dismemberment or loss of function in monthly installments, the number of installments due shall be increased in number by 10 percent but in no event shall the increase be less than one installment of $150 or $100, as the case may be.

C. *Injury increasing disability.* The Administrator in determining if disability, dismemberment or loss of function exists, or if found to exist, the quality thereof, will not take previous disabilities, dismemberments or losses of function into account. If, however, such previous condition was insured under this Second Seamen's War Risk Policy, the insured shall receive with respect to the two claims an aggregate sum not less than he would have been entitled to under either subdivision (2) and (3) of paragraph A or paragraph B hereof, had the injuries causing both disabilities been received at the same time.

D. Disability shall not include incapacity directly resulting from bodily or mental infirmity or disease of any kind. Nor shall benefits be paid for dismemberment or loss of function directly resulting from bodily or mental infirmity or disease of any kind.

E. If the insured elects after a determination by the Administrator that he is entitled to benefits under either subdivision (2) paragraph A or paragraph B hereof to accept payments for such disability, dismemberment, or loss of function, as the case may be, in installments, and if the insured dies from a cause not insured against herein before he has received the last installment, the remainder which he would have received under such subdivision had he survived shall be paid to the person or persons who would have received his life insurance hereunder, subject, however, to all the conditions, stipulations, and provisions contained in this policy governing the disposition and payment of the insurance for loss of life.

The right of the insured to payment of the benefits provided for herein shall be conditioned upon his or her being alive to receive payment, and benefits shall not be paid to the heirs, executors, or administrators of the insured, or of any other person.

ART. 13. *Physical examination.* The underwriter shall have the right to require an examination of the person of the insured when and so often as it may reasonably require and also the right and opportunity in case of death to make an autopsy where it is not forbidden by law.

ART. 14. *Personal effects defined.* The term "personal effects" includes personal property reasonably necessary or required for use on board the vessel as well as those articles ordinarily or customarily carried on board for the personal use, wear, comfort, or convenience of the insured, either while on board, while in a foreign port, or upon his return to the home port. Articles of apparel, whether used for ornamentation or otherwise, and articles used in the performance of duties on board, are also included. Articles carried for the purpose of business foreign to the actual duties of the insured, or for resale, are excluded.

ART. 15. *Amount of payment for loss of, or damage to, personal effects.*

A. In the event of total loss of, or damage (equivalent to total loss) to the personal effects of any insured, reimbursement for such total loss or damage shall be as follows:

(a) Licensed officer, $500;

(b) Unlicensed crew member, $300;

(c) U. S. Merchant Marine cadet or cadet officer, $300.

If an insured shall establish the loss of a sextant which he carried aboard the vessel, he shall be paid $100 extra. If the insured shall establish the loss of binoculars, which he carried aboard the vessel, he shall be paid $50 extra. A total loss shall be determined without reference to apparel actually worn by the crew member at the time of the loss or damage.

B. In the event of a partial loss of or damage to the personal effects of an insured, he shall be reimbursed for the actual value of such effects lost or damaged to the extent of such loss or damage, but in no event shall the payment for such effects lost or damaged exceed the amount set forth in paragraph A of this article 15 for which total loss or damage is payable.

ART. 16. *Death of an insured prior to payment for loss of or damage to personal effects.* Payment for loss of or damage to personal effects shall be conditioned upon the insured being alive to receive payment, and shall not be payable to his heirs, executors, administrators or assigns, except as provided in article 6 hereof.

ART. 17. *Detention and repatriation benefits.* A. If it is established to the satisfaction of the Administrator, who, for this purpose, may rely on any official information furnished him by any department or agency of the United States Government, that the insured's vessel has been destroyed or abandoned as a result of a risk or peril insured against herein and that the insured has survived such an event and is not detained (in the sense that that term is used in paragraph B, article 17 hereof), monthly benefits shall be paid as hereinafter provided in this paragraph A. Such monthly benefits shall be equal to the monthly basic wage of the insured (including special emergency wage), as shown by the shipping articles signed by the insured or, if not on articles, by the contract of employment entered into by the insured. Such monthly benefits shall be paid from the date of such destruction or abandonment of the vessel, which, for the purposes hereof, shall be the date recognized by the Administrator when the obligation to pay wages under the applicable shipping articles or contract of employment terminated, or which is otherwise fixed by the Administrator as the date of such destruction or abandonment, and shall continue until the insured arrives at a continental port of the United States.

Such monthly benefits shall be paid to the person or persons, if living, to whom the insured's wages are allotted under the applicable shipping articles. Such allottee or allottees shall receive that portion of the monthly benefits which is equal in amount to the insured's monthly wage which has been allotted, provided such latter amount does not exceed the amount of the monthly benefits, and provided further that no payment shall be made to an allottee for any fractional allotment period between the last regular allotment date and date when such monthly benefits terminate. If no such allotment has been made, or if the person to whom the insured has allotted his wages is dead or dies, or if an allotment has been made and the allottee is living but the amount of monthly benefits exceeds the amount which can be paid to such allottee, the benefits or the remainder thereof shall be held by the Administrator for the benefit of the insured until his return to the continental United States, excluding Alaska,

with the right to the Administrator, however, to pay such benefits or the remainder thereof in whole or in part to any person or persons named in subdivision (3), paragraph A, article 7 of these stipulations and conditions (for the purpose of this paragraph the words "widow" and "widower" as used in subdivision (3) shall mean "wife" and "husband" respectively) including the allottee or allottees aforementioned, and such payment when made shall be conclusively presumed to have been made for the account of the insured.

B. If it is established to the satisfaction of the Administrator, who, for this purpose may rely on any official information furnished him by any department or agency of the United States Government, that the insured is detained, either by capture by an enemy of the United States or by internment, but not otherwise, monthly benefits shall be in the same amount or amounts and shall be held or paid in the same manner and for or to the same person or persons as set forth in paragraph A, article 17 hereof. Such monthly benefits shall be paid during such period of detention beginning with the date that the insured suffered such detention as determined by the Administrator.

C. If, in the opinion of the Administrator, it is uncertain—

(1) Whether the insured survived or died as a proximate result of the occurrence of a risk or peril insured against, or

(2) Whether the insured survived or died as a proximate result of the occurrence of an event which may be a risk or peril insured against, but as to which, in the opinion of the Administrator, there is also uncertainty, or

(3) Whether the insured's vessel has been destroyed or abandoned as a proximate result of a risk or peril insured against, although it is certain, in the opinion of the Administrator, that the insured is alive, or

(4) Whether the insured is detained (in the sense that that term is used in paragraph B, article 17 hereof) although it is certain, in the opinion of the Administrator, that the insured is alive,

monthly benefits shall be paid as hereinafter provided in this paragraph C. Such monthly benefits shall be in the same amount or amounts and shall be held or paid in the same manner and for or to the same person or persons as set forth in paragraph A, article 17 hereof. Such monthly benefits shall be paid from the date, as fixed by the Administrator, the insured, if alive, was probably separated from his vessel under any of the respective situations set forth above and shall continue until—

(a) The Administrator determines that the insured is entitled to benefits as provided in paragraph A, article 17 hereof, in which event monthly benefits shall thereafter be paid as provided in paragraph A, Article 17 hereof, or

(b) The Administrator determines that the insured is entitled to benefits as provided under paragraph B, article 17 hereof, in which event monthly benefits shall thereafter be paid as provided in paragraph B, article 17 hereof, or

(c) The death of the insured is established in a manner satisfactory to the Administrator, or

(d) The issuance by the Administrator of certificate of presumptive death of the insured, whichever first occurs, in which event benefits shall cease: *Provided, however* That if the Administrator determines that at any time after such benefits have ceased the insured is entitled to benefits or has been entitled to benefits as provided in either paragraph A or paragraph B, article 17 hereof, monthly benefits shall thereafter be paid as provided in paragraph A or paragraph B, article 17 hereof, as the case may be, with proper adjustment for the period that the insured was entitled to be paid such benefits prior to the Administrator's determination thereof.

D. If, while the insured is being paid benefits under either paragraph A or B or C, article 17 hereof, the Administrator determines that the insured was not, or is no longer, entitled to benefits under the provisions of such paragraph, then the payment of such benefits shall cease: *Provided*, That, if the Administrator determines the insured is entitled to benefits under the provisions of any other of such paragraphs, the insured shall thereafter be entitled to benefits under the provisions of such paragraph.

E. In no event shall benefits be paid under paragraphs A, B, C, or D, article 17 hereof, beyond three months after the termination of the national emergency shall have been proclaimed by the President or beyond the time that the insured shall either refuse without good cause to return to the continental United States, excluding Alaska, or accept employment on another vessel for a purpose other than to be repatriated.

F. If the insured, upon his return to the United States (excluding Alaska) shall be entitled to receive under paragraph A or B or C, article 17 hereof, benefits exceeding a sum equal to twelve months' basic wage (including special emergency wage) payment of a sum equal to twelve months' basic wage (including special emergency wage) shall be made to the insured forthwith. Any unpaid balance of such benefits shall be paid to the insured in monthly installments equivalent in amount to such monthly benefits until paid in full. In determining the amount which the insured is entitled to receive in a lump sum, as aforesaid, benefits paid to his allottees or to the persons named in subdivision (3) paragraph A, article 7 hereof, shall not be considered. Payments to an allottee or to schedule beneficiaries shall not be made after the date of arrival of the insured at a continental United States port, and all payments thereafter shall be made only to the insured: *Provided, however* That if the insured dies after his arrival and while he is receiving monthly payments as above set forth, such monthly payments shall thereafter be paid to his allottees or to schedule beneficiaries until paid in full.

G. The right of the insured to be paid benefits or to have benefits paid on his account, under paragraphs A, B, or C, article 17 hereof, shall be conditioned upon the insured being alive during the period such benefits accrued or were paid *Provided, however* That benefits payable for the account of the insured to allottees or schedule beneficiaries shall always be paid in full to the date of establishment of death or presumed death of the insured as determined under paragraph C, article 17 hereof. Such benefits under no circumstances shall be paid or considered payable to heirs, executors or administrators of the insured or of any allottee or schedule beneficiary of the insured.

H. The Underwriter agrees that detention and repatriation benefits, as provided under this article 17, shall continue until the insured shall be returned to the port to which the Operator is obligated to return the insured, as shown by the shipping articles signed by the insured or if not on articles, by the contract of employment entered into by the insured.

ART. 18. *Payment constituting a discharge.* A payment by the Administrator to the person or persons determined by him to be entitled to all or any of the proceeds of this policy shall constitute a pro tanto discharge of the obligations under this policy of the United States of America, the Department of Commerce, and the Maritime Administrator

ART. 19. *Nonassignability.* Neither this policy nor any part thereof nor any insurance, benefits or allowances payable hereunder shall be assignable.

ART. 20. *Amount permitted to be paid agent, or attorneys.* Except in the event of legal proceedings arising under or in connection with this policy, payment to any attorney, agent or any other person acting for or on behalf of an insured, beneficiary or recipient, by such insured or any beneficiary or recipient, for such assistance as may be required in the preparation of the claim, shall not exceed $25 in any one case, except that the Administrator may approve an additional amount in those cases in which he feels the nature of the services rendered warrant it. At any time during the pendency of any litigation arising under or in connection with this policy or whenever a judgment or a decree shall be rendered in an action or proceeding arising under or in connection with this policy for the payment of any insurance, benefits or allowances under this policy, the court in which such action or proceeding is pending or in which a judgment or decree has been rendered may and is requested to allow such fees for the attorney or attorneys of the person or persons who are parties to such action or proceeding or who have obtained a judgment or a decree, as it may determine to be just compensation for the services rendered. Before the payment of any insurance, benefits or allowances hereunder, or any judgment or decree, as aforesaid, the Administrator may require proof to be submitted to him in the form of an affidavit, or in any other manner which to him seems fit, by the insured, the beneficiary, the recipient, or holder of any judgment or decree, or his attorney agent, or any other person acting for or on their behalf, or any or all of them, that the payment previously or thereafter to be made to such attorney, agent or other person does not exceed the sum herein specified or allowed by the court, as the case may be.

ART. 21. *Notice of loss and claim.* Notice of disability (including dismemberment and loss of function) and claim for payment therefor under this policy shall be given to the Administrator within ninety days after the happening of the event causing the disability (including dismemberment and loss of function) or ninety days after the insured returns to the continental United States, excluding Alaska. Notice of loss of, or damage to, personal effects and claim for payment therefor under this policy shall be given to the Administrator within ninety days after the happening of the event causing the loss, or ninety days after the insured returns to the continental United States, excluding Alaska.

Any insured who is employed on a vessel as an employee of the United States through the Office of National Shipping Authority, Maritime Administration, or successor Office shall comply with applicable rules and regulations pertaining to the filing of claims and administrative allowance or disallowance as prescribed by NSA Order No. 67 (LPR 1) 20 F. R. 2414, or as amended or revised.

ART. 22. *Limitation of suit.* No action or suit upon this policy shall be valid unless commenced within two years from the time the insurance, benefits or allowances conferred by this policy are payable, except that

(a) An action or suit by the insured may be commenced at any time within two years after he returns to the United States or the termination of the national emergency shall have been proclaimed by the President, whichever first occurs, and

(b) The time during which a person, other than the insured, is in enemy occupied territory shall be excluded from the two year period as aforesaid.

Any insured who is employed on a vessel as an employee of the United States through the Office of National Shipping Authority, Maritime Administration, or successor Office shall comply with applicable rules and regulations pertaining to the filing of claims and administrative allowance or disallowance as prescribed by NSA Order No. 67 (LPR) 20 F. R. 2414, or as amended or revised.

ART. 23. *Deviation and change of voyage.* This insurance shall not be affected by a deviation or change of voyage of the vessel, except that the Administrator may require the payment of an additional premium.

ART. 24. *"Administrator" defined.* Wherever the term "Administrator" is used in this policy that term shall include the person who is the Maritime Administrator at the time of the issuance of this policy and his successor or successors in office, and such other person or persons employed by the Administrator, the Maritime Administration, the Department of Commerce or the United States of America, to whom the Administrator may delegate duties or powers for the administration of the insurance. Wherever there is mention in this policy of a decision, determination or exercise of discretion by the Administrator, such terms shall include a decision, determination or exercise of discretion of a person or persons to whom the Administrator may delegate such power or powers and shall not be taken to mean that the personal act of the Administrator is required.

ART. 25. *Multiple claims against the United States.* A. It is the intent of the underwriter in the issuance of this policy to avoid providing or paying any benefit or sum of money for any loss, event or occurrence to the extent that legal liability to pay for the same loss, event or occurrence otherwise exists on the part of the United States of America, the Department of Commerce, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel, and this policy shall be construed to give effect to such intent. By the acceptance of the insurance protection afforded by this policy, by the designation of any beneficiary thereunder or by otherwise acting pursuant to the terms of this policy, the insured, in behalf of himself, his personal and legal representatives, administrators, executors, heirs at law, next of kin, dependents and beneficiaries, acknowledges such intent and agrees to the conditions and provisions of this policy, including specifically those contained in this Article 25. Similarly, any beneficiary or person to whom any benefit or sum of money is paid under the provisions of this policy does, by making claim therefor or by the acceptance thereof, acknowledge such intent and agrees to the conditions and provisions of this policy, including specifically the conditions and provisions of this article 25.

B. If any final judgment or award is obtained by any person against the United States of America, the Department of Commerce, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel by reason of the loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, or detention (including the occurrence of other situations hereinbefore provided) of the insured but based on a claim or cause of action other than one under this policy, and if such respective loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, or detention (including the occurrence of other situations hereinbefore provided) of such insured, either separately or combined, also constitutes or forms the basis of a claim payable under this policy, the amount which otherwise would have been payable hereunder because of such claim shall be reduced by an amount equal to the amount of such final judgment or award, unless such person, in a form and manner satisfactory to the Administrator, effectively and validly releases or discharges the United States of America, the Department of Commerce, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the Administrator, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel from their respective obligations under such final judgment or award to the extent of the amount of such claim payable under this policy.

C. The payment and acceptance of any benefit or sum of money under this Policy shall constitute a waiver, release, acceptance, discharge and satisfaction, to the extent of such payment, of any and all claims, causes of actions, judgments or awards against the United States of America, the Department of Commerce, the Maritime Administration, the Administrator, the owner of a vessel under time or bareboat charter to the Maritime Administration, the operator of a vessel owned by the Maritime Administration or under time or bareboat charter to it, or the agent of the Maritime Administration in the operation of such a vessel other than under this policy by arising out of the respective loss of life, disability (including dismemberment and loss of function), loss of or damage to personal effects, or detention (including the occurrence of other situations hereinbefore provided) for which such benefit or sum of money was paid and accepted under this policy.

D. This article 25 shall not apply to claims for wages, maintenance and cure where the right to such items arises under the general maritime law of the United States and not under this policy, but this article 25 shall apply to claims for wages to the extent that the insured, his allottee or any other person who is entitled to receive or has received benefits or sums of money under article 17 hereof, and to claims for maintenance to the extent and for the period that the insured is entitled to receive or has received benefits or sums of money under paragraph A of article 12 hereof.

ART. 26. *Amendments and modifications.* If the Administrator determines that the Second Seamen's War Risk Policy (1955) should be amended and modified to provide for increased hazards and risks undertaken by the masters, officers and crews of vessels of the American Merchant Marine arising from important changes or developments in emergency conditions, or if the Administrator determines that the Second Seamen's War Risk Policy (1955) should be amended and modified to correct injustices or cases of hardship arising under and by virtue of its present terms, the Administrator reserves the right to amend or modify the Second Seamen's War Risk Policy (1955), including this particular policy, in such manner and in such respects as prescribed by him. If the Administrator further determines that it is necessary and proper to make such amendments or modifications retroactive in effect in order to avoid serious inequalities, he reserves the right to make any such amendment or modification applicable to any and all cases or claims arising under the Second Seamen's War Risk Policy (1955), including this particular policy, irrespective of whether benefits have or have not been claimed or paid thereunder, in such manner and in such respects as prescribed by him.

ART. 27. *Payment of premium and cancellation.* A. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Operator within fifteen days after receipt by the Operator of notice of the revised rate, this policy shall become null and void and of no effect as of midnight, e. s. t., of the day ending such fifteen-day period, unless the Operator, within such period, dispatches notice to the Maritime Administrator, by telegraph, of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the receipt by the Maritime Administrator of such notice of nonacceptance, the insurance provided hereunder shall terminate.

B. In the event any premium, either original or additional, which becomes due and payable under this policy, is not paid within thirty days after receipt by the Operator of notice of the amount thereof, this insurance shall become null and void and of no effect as of the commencement of the period for which the premium charge is made, unless the Maritime Administrator agrees otherwise.

C. If the vessel shall be requisitioned by the United States on a basis whereby the United States provides insurance equivalent to that provided hereby, then this insurance shall terminate and pro rata daily return premium shall be paid. In no other event shall there be any return of premium.

ART. 28. *Extension.* Should the vessel be at sea at the natural expiry of this Policy, this insurance shall be extended until midnight, Greenwich Mean Time, of the day on which the vessel is moored at the next port to which she proceeds and 24 hours thereafter, provided, notice be given to the Underwriter as soon as practicable and an additional premium paid, if required.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this policy but it shall not be valid unless countersigned by an authorized underwriting agent.

UNITED STATES OF AMERICA,
By: Maritime Administrator, Acting for the Secretary of Commerce.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned this _____ day of _____, 195__.

(Underwriting agent)
By: _____

(b) *Increased Benefits Endorsement.* The following is the standard form of Increased Benefits Endorsement which prescribes the areas in which increased benefits are presently applicable. The areas covered by this endorsement are subject to change.

Form MA-242 (A) (8-55)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

INCREASED BENEFITS ENDORSEMENT

This endorsement is attached to and made a part of Second Seamen's War Risk Policy (1955) No. SSWR _____ issued to _____.

It is hereby understood and agreed that while a vessel covered by this policy is in the following described areas:

Area I. All waters within and bounded by the following lines: beginning at a point on the China Coast at latitude 23° north,

thence east to the intersection with longitude 119° east, thence north-easterly to the intersection of a point at latitude 26°15′ north and longitude 121° east and thence west along the 26°15′ parallel of north latitude to the China Coast;

Area II. All waters within and bounded by the following lines: beginning at a point on the China Coast at 33° north latitude, thence east to the intersection with longitude 124° east, thence north along 124° east meridian to the China Coast;

Area III. All waters within and bounded by the following lines: beginning at a point on the China Coast at 26°15′ north latitude, thence east to the intersection with 121° east longitude, thence north-easterly to a point at the intersection of 30° north latitude and 124° east longitude, thence north to the intersection of 33° north latitude and 124° east longitude and thence west along the 33° parallel of north latitude to the China Coast;

Area IV. All waters within and bounded by the following lines: beginning at a point on the China Coast and 23° north latitude, thence east to 119° east longitude, then north-easterly to 30° north latitude and 124° east longitude, and from 30° north latitude and 124° east longitude southerly to Shokoto Sho, then westerly to Shichisei Seki, and then from Shichisei Seki westerly intersecting at the China Coast 23° north latitude;

And all waters within and bounded by the following lines: beginning at a point on the China Coast at 23° north latitude, thence easterly to a point 22°30′ north latitude and 118° east longitude thence westerly to Gap Rock thence due west along the 21°50′ line north latitude to the China Coast;

Also within a sixty (60) mile radius of the mouth of the Donnal River or Cape St. Jacques.

the benefits provided thereunder as respects loss of life, disability, dismemberment and loss of functions are increased by 100 percent and with respect to benefits for personal effects of unlicensed personnel from $300 to $500.

Upon knowledge by the insured of a vessel being in such areas, the insured shall, as soon as permissible under Government laws and regulations, furnish the Maritime Administrator with the name of such vessel and the dates of its entry into and departure from such areas.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

This endorsement becomes effective with the inception of the policy to which it is attached.

Not valid unless countersigned by a duly authorized agent of the Department.

UNITED STATES OF AMERICA,
By: Maritime Administrator, Acting for the Secretary of Commerce.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning this policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this instrument, but acts solely under the power conveyed to the Underwriting Agent by the agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned this _____ day of _____, 195__.

(Underwriting agent)
By: _____

SUBPART E—WAR RISK BUILDER'S RISK INSURANCE

§ 308.400 *Eligibility of a vessel for insurance.* A vessel is eligible for insurance if it is an American vessel as defined in section 1201 (a) Public Law 763, 81st Congress, being constructed in a shipyard within the continental limits of the United States.

§ 308.401 *Periods during which a vessel under construction may be insured*—(a) *Prelaunching period.* This period is from the date and time the first material destined for inclusion as part of the vessel becomes a risk at the shipyard of the builder to the date and time the vessel first becomes water-borne after launching.

(b) *Postlaunching period.* This period is from the date and time the vessel first becomes water-borne after launching to the date and time of delivery of the vessel by the builder.

(c) *Portions of periods.* A vessel may be insured for a portion of either period as cited in paragraph (a) or paragraph (b) of this section at the sole discretion of the Maritime Administrator.

§ 308.402 *Amounts for which a vessel will be insured*—(a) *Pre-launching period.* The amount insured during this period will be the cost of material destined for inclusion as a part of the vessel, at risk at the shipyard of the builder plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 percent, all as determined from the builder's records.

(b) *Postlaunching period.* The amount insured during this period will be (1) an amount not in excess of the difference in amount between the total amount of war risk insurance obtainable from companies authorized to do an insurance business in a State of the United States and the contract price of the vessel plus the cost of materials and equipment furnished by the owner and not included in such contract price, or (2) an amount not in excess of the contract price of the vessel plus the cost of materials and equipment furnished by the owner and not included in the contract price: *Provided,* That no war risk insurance is obtainable from companies authorized to do an insurance business in a State of the United States.

(c) *Maximum liability.* The amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the lower of (1) the amount insured or (2) the vessel's fair and reasonable value as determined in accordance with Public Law 763, 81st Congress, and any other applicable acts of Congress: *Provided,* That the amount payable under paragraph (b) of this section shall not exceed the maximum sum which the Maritime Administrator, as underwriter, is authorized to pay under any applicable acts of Congress: *And provided further,* That in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

§ 308.403 *Application for insurance.* Application for insurance shall be made to the Chief, Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C. The applications shall be signed by all parties to be named as assureds, unless they have filed with the Chief, Division of Insurance, written designations of a broker or brokers to act for them, in which case the applications may be signed by such broker or brokers.

§ 308.404 *Form of application.* Applications submitted shall be in duplicate and in accordance with the following form. Separate applications shall be submitted for each of the coverages, paragraphs (a), and (b) (1) and (2) referred to in § 308.402.

Form MA-282 (12-52)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

Application for War Risk Builder's Risk Insurance

Application is made for War Risk Builder's Risk Insurance pursuant to Public Law 763, 81st Congress, and in accordance with all provisions of law and subject to all limitations thereof:

Assured to be _____.

Loss, if any, payable to _____ _____ or order.

On Hull, Tackle, Apparel, Ordnance, Munitions, Artillery, Engines, Boilers, Machinery, Appurtenances, etc. (including plans, patterns, moulds, etc.). Boats and other Furniture and Fixtures and all material belonging and destined for _____ _____ building at _____.

Indicate whether application is for coverage (a), (b) (1) or (b) (2). Coverage _____.

Coverage (a). Prelaunching Period

Amount to be insured; the valuation at risk at the shipyard of the builder during the currency of the insurance for which application is made, which shall be the cost of materials plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 percent, all as determined from the Assured's records and reported monthly.

To attach as of the date and time the first material destined for inclusion as a part of the vessel becomes at risk at the shipyard of the builder and to expire as of the date and time the vessel first becomes water-borne after launching. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

Coverage (b) (1). Post-launching Period, Excess

Amount to be insured $_____ on an excess of loss basis, being the excess of $_____ primary war risk insurance, which it is represented is the maximum amount of war risk insurance obtainable from companies authorized to do an insurance business in a State of the United States.

The vessel is to be valued at $_____, being the contract price of $_____ plus $_____ for materials and equipment furnished by the owner and not included in the contract price, it being understood that if no amount has been stated for such materials and equipment same will not be insured. To attach as of the date and time the vessel first becomes water-borne after launching and to expire as of the date and time of delivery of the vessel by the builder. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

Coverage (b) (2). Post-launching Period, Primary

Amount to be insured $_____, it being represented that no war risk insurance is obtainable from companies authorized to

do an insurance business in a State of the United States.

The vessel is to be valued at $_____, being the contract price of $_____ plus $_____ for materials and equipment furnished by the owner and not included in the contract price, it being understood that if no amount has been stated for such materials and equipment same will not be insured.

To attach as of the date and the time the vessel first becomes water-borne after launching and to expire as of date and time of delivery of the vessel by the builder. Both dates and times will be reported to the Underwriter as soon as known to the Assured.

It is further understood that the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the lower of (a) the amount insured or (b) the vessel's fair and reasonable value as determined in accordance with Public Law 763, 81st Congress, and any other applicable Acts of Congress, provided that the amount payable under (b) hereof shall not exceed the maximum sum which the Maritime Administrator, as underwriter, is authorized to pay under any applicable Acts of Congress, and provided further that in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with Section 802, Merchant Marine Act 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

Terms and conditions: Subject to form of policy prescribed by the Maritime Administrator, acting for the Secretary of Commerce.

Rates of premium to be fixed by the Maritime Administrator, acting for the Secretary of Commerce.

Policy to be sent to:

Name _____

Address _____

_____

Dated _____ 195___

Applicant _____

By _____

(Authorized signature)

§ 308.405 *Issuance of policies; their terms and conditions.* Upon acceptance of an application a policy in the form set forth in § 308.408 will be issued with endorsements MA-283 (A) and MA-283 (D), or MA-283 (B) and MA-283 (D), or MA-283 (C) and MA-283 (D), as appropriate, attached.

§ 308.406 *Premiums and the payment thereof.* For the prelaunching period premium will be charged on the average value at risk during each calendar month or the daily pro rata part thereof for periods of less than one calendar month. For the post-launching period premium will be charged on the amount insured for the full period. Premiums shall be due and payable within thirty days after receipt by the assured of notice of the amount thereof and if not paid within that period the insurance shall become null and void and of no effect from the beginning of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise. Payment shall be made to the Maritime Administration, Department of Commerce, Washington 25, D. C., by check payable to the order of "Maritime Adm.—Commerce."

§ 308.407 *Right of Maritime Administrator to change rate of premium.* The Maritime Administrator acting for the Secretary of Commerce shall have the right to change the rate of premium at any time, and unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate the policy shall become null and void and of no effect as of midnight, standard time, at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen day period during which the insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administrator by telegraph of his refusal to accept such revised rate of premium, in which event premium at the revised rate shall be payable for that portion of the fifteen day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance the insurance shall ipso facto terminate.

§ 308.408 *Standard form of War Risk Builder's Risk Insurance Policy.* The following is the standard form of War Risk Builder's Risk Insurance policy.

Form MA-283 (12-52)

Policy No. WRBR _____

UNITED STATES OF AMERICA

Represented by the Maritime Administrator, acting for the Secretary of Commerce (sometimes hereinafter called the Underwriter) by this policy of insurance, in accordance with applicable provisions of law and subject to all limitations thereof, does make insurance and cause to be insured _____ _____ for account of themselves to the amount of _____ dollars for the period of time commencing the ____ day of _____ 19____ _____ time and ending the ____ day of _____ 19____ _____ time or until delivery at _____ _____ if delivered at an earlier date. In the event of delivery not being effected by the date last above-mentioned, this policy may be extended at additional premium to be fixed by the Maritime Administrator provided notice of the extension be given to the Maritime Administrator prior to that date. In no case shall this insurance extend beyond delivery of the vessel. Loss, if any, payable in funds current in the United States to _____ or order.

On Hull, Tackle, Apparel, Ordnance, Munitions, Artillery, Engines, Boilers, Machinery, Appurtenances, etc. (including plans, patterns, moulds, etc.) Boats and other Furniture and Fixtures and all material belonging and destined for _____ _____ building at _____ as per clauses hereinbelow specified.

The Underwriter to be paid in consideration of this insurance _____ dollars being at the rate of _____ percent.

The said vessel, etc., including all materials and/or appliances therefor, for so much as concerns the Assured and the Underwriter, is and shall be valued at $_____ (being the contract price of $_____ and $_____ for materials and equipment furnished by the Owner and not included in the contract price), which shall be deemed the insured value of the vessel for the purposes of this insurance. If no amount is stated for materials and equipment furnished by the Owner the Underwriter shall have no liability for loss of or damage thereto.

In the event of loss, the Underwriter shall not be liable for a greater proportion thereof than the amount of this insurance bears to the insured value.

Touching the Adventures and Perils which the said Underwriter is contented to bear and take upon itself they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, and of all other like Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Vessel, &c., or any part thereof; excepting, however, such of the foregoing Perils as may be excluded by provisions elsewhere in the Policy or by endorsement. And in case of any loss or misfortune it shall be lawful for the Assured, their factors, servants and assigns, to sue, labor and travel for, in, and about the defense, safeguard and recovery of the said ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof the said Underwriter will contribute according to the rate and quantity of the sum herein assured. And it is expressly declared and agreed that no acts of the insurer or insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment. With leave to sail with or without pilots, to tow and be towed, and to assist vessels and/or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbour and going on or off gridiron slipways, graving docks and/or pontoon or dry docks as often as may be done during the currency of this Policy. Unless physically deleted by the Underwriter, the following warranty shall be paramount and shall supersede and nullify any contrary provision of the Policy:

F. C. & S. CLAUSE

Notwithstanding anything to the contrary contained in the Policy, this insurance is warranted free from any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment, or the consequences thereof or of any attempt thereat, or any taking of the Vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise; also from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but the foregoing shall not exclude collision, explosion or contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war, from all loss, damage or expense caused by any weapon of war employing atomic fission or radioactive force. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

If war risks are hereafter insured by endorsement on the Policy, such endorsement shall supersede the above warranty only to the extent that their terms are inconsistent and only while such war risk endorsement remains in force.

CLAUSES FOR BUILDERS' RISK

This Insurance is also to cover all risks, including fire, while under construction

and/or fitting out, including materials in buildings, workshops, yards and docks of the Assured, or on quays, pontoons, craft, &c., and all risk while in transit to and from the works and/or the vessel wherever she may be lying, also all risks of loss or damage through collapse of supports or ways from any cause whatever, and all risks of launching and breakage of the ways.

This Insurance is also to cover all risks of trial trips, loaded or otherwise, as often as required, and all risks whilst proceeding to and returning from the trial course but warranted that all trials shall be carried out within a distance by water of 100 nautical miles of the place of construction or held covered at a rate to be arranged.

With leave to proceed to and from any wet or dry docks, harbours, ways, cradles, and pontoons during the currency of this policy.

With leave to fire guns and torpedoes but no claim to attach hereto for loss or damage to same or to ship or machinery unless the accident results in the total loss of the Vessel. In case of failure of launch, underwriters to bear all subsequent expenses incurred in completing launch.

Average payable irrespective of percentage, and without deduction of one-third, whether the Average be particular or general.

General Average and Salvage charges as per foreign custom, payable as per foreign statement, and/or per York-Antwerp rules, if required; and in the event of Salvage, towage, or other assistance being rendered to the Vessel hereby insured, by any Vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner hereinafter provided for under "Collision Clause," and the amount so awarded, so far as applicable to the interest hereby insured, shall constitute a charge under this policy.

In the event of deviation to be held covered at an additional premium to be hereafter arranged.

To cover while building all damage to hull, machinery, apparel, or furniture, caused by settling of the stocks, or failure or breakage of shores, blocking or staging, or of hoisting or other gear, either before or after launching and while fitting out.

It is agreed that any changes of interest in the vessel hereby insured shall terminate the insurance provided by this policy, unless the Maritime Administrator agrees otherwise. And it is expressly declared and agreed that no acts of the Underwriters or Assured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover loss of or damage to the hull or machinery, through negligence of Master, Mariners, Engineers or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery, or Hull, or from explosions or other causes, arising either on shore or otherwise, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the Owners of the ship or any of them, or by the Manager, and to cover all risks incidental to steam navigation, or in graving docks.

There shall be no recovery for a constructive total loss under this policy unless the expense of recovering the vessel and restoring her to the condition she was in prior to the loss would exceed her value in that condition, which value shall be determined by applying to the completed contract price, plus the cost of materials and equipment furnished by the Owner and not included in the contract price, if insured hereunder, the percentage of the vessel which was completed on the ways, while being launched or after launching as the case may be at the time of the loss; and no claim for a constructive total loss hereunder shall exceed this policy's proportion of the value so computed, plus this policy's proportion of any damage to material insured hereunder and not yet installed in the vessel, plus any salvage and special charges, and sue and labor expenses.

Nothing in this policy shall be construed to insure against or cover any loss, damage or expense in connection with docks, shipways, tools or any other property of the shipyard not intended to be incorporated in the vessel, excepting temporary supports, scaffolding and similar temporary structures the value of which is included in the contract price of the vessel; provided, nevertheless, that in case of failure of launch, underwriters shall bear all subsequent expenses incurred in completing launch.

COLLISION CLAUSE

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, the Underwriter, will pay the Assured such proportion of such sum or sums so paid as its subscription thereto bears to the completed contract price of the Ship hereby Insured, plus the cost of materials and equipment furnished by the Owner and not included in the contract price, if insured hereunder, and in cases where the liability of the Ship has been contested with the consent, in writing, of a majority of the underwriters on the hull and/or machinery (in amount), it will also pay a like proportion of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the owners of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of cross liabilities, as if the owners of such Vessels had been compelled to pay to the owners of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision. And it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same owners, all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the managing owners of both Vessels, and one to be appointed by the majority in amount of underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding.

This clause shall also extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, or for injury to harbors, wharves, piers, stages, and similar structures.

PROTECTION AND INDEMNITY CLAUSE

It is further agreed that if the Assured shall by reason of his interest in the insured Ship become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses arising from or occasioned by any of the following matters or things during the currency of this policy, that is to say:

Loss of or damage to any other ship or boat or goods, merchandise, freight, or other things or interests, whatsoever on board such other ship or boat caused proximately or otherwise by the ship insured in so far as the same is not covered by the running down clause set out above. Loss of or damage to any goods, merchandise, freight or other things or interest, whatsoever other than as aforesaid whether on board the said vessel or not, which may arise from any cause whatever.

Loss of or damage to any harbor,, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever, or to any goods or property in or on the same, howsoever caused.

Any attempted or actual raising, removal or destruction of the wreck of the insured ship or the cargo thereof, or any neglect or failure to raise, remove, or destroy the same. Any sum or sums for which the Assured may become liable or incur from causes not hereinbefore specified, that are absolutely or conditionally recoverable under the printed forms of Protection and Indemnity policy commonly issued by stock insurance companies in the United States, but excluding loss of life and personal injury.

The Underwriter will pay the Assured such proportion of such sum or sums so paid, or, which may be required to indemnify the Assured for such loss, as its subscription bears to the completed contract price of the ship hereby insured, plus the cost of materials and equipment furnished by the Owner and not included in the contract price, if insured hereunder, and where the liability of the Assured has been contested with the consent in writing of a majority (in amount) of the Underwriters on the ship hereby insured, the Underwriter will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

Notwithstanding the foregoing, this policy is:

(A) Warranted free from any claim arising directly or indirectly under Workmen's Compensation or Employers Liability Acts and any other Statutory or Common Law liability in respect of accidents to any person or persons whomsoever.

(B) Warranted free of loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions.

(C) Warranted free of loss or damage caused by earthquake.

(D) Warranted free of any consequential damages or claims for loss through delay however caused.

(E) Warranted free from claim for loss or damage to engines, boilers and all other materials while in transport, except in the port at which the vessel is being built.

This policy shall not be vitiated by any unintentional error in description of interest or voyage, provided the same be communicated to Underwriter as soon as known to the Assured, and an additional premium paid if required.

The words "Owner" and "Assured" as used in this policy shall be interpreted to mean either "Builder" or "Owner" or both.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this policy, but it shall not be valid unless countersigned by or on behalf of the Chief, Division of Insurance, Maritime Administration.

Countersigned at Washington, D. C., this ------ day of 195-----.

UNITED STATES OF AMERICA,
By Maritime Administrator, acting
for the Secretary of Commerce.

Maritime Administrator.

By:

Chief, Division of Insurance.

Form MA-283 (A) (12-52)

CLAUSES FOR BUILDER'S RISK

(Pre-launching Period)

Endorsement attached to and made a part of Policy WRBR _____ issued to _____ _____.

The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder shall be the valuation at risk at the shipyard of the builder during the currency of this insurance, which shall be the cost of materials plus the cost of labor, other direct charges, overhead, and profit of not exceeding 10 percent, all as determined from the Assured's records but the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the vessel's fair and reasonable value as determined in accordance with Public Law 763, 81st Congress, and any other applicable Acts of Congress, provided that the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as underwriter, is authorized to pay under any applicable Acts of Congress, and provided further that in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. The Assured agrees to report to the Underwriter 100% of the valuation at risk and to pay premium on the amount reported.

3. The valuation at risk (as defined above) shall be reported to the Underwriter as follows:

(a) Valuation at risk at the inception of this insurance to be declared as soon as practicable.

(b) Valuation at risk as of the end of each calendar month thereafter to be declared not later than 15 days immediately following.

4. Premium shall be payable monthly at the rate of _____ percent per month. Premium for periods of less than one month shall be payable at the daily pro rata of the monthly rate. The premium for each month or part thereof shall be computed on the average of the last two successive reports. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of the "Maritime Adm.-Commerce".

5. Attaching as of the date and time the first material destined for inclusion as a part of the vessel becomes at risk at the shipyard of the builder and expiring as of the date and time the vessel first becomes water-borne after launching. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

6. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this policy shall thereupon become null and void and of no effect as of Midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administrator, by telegraph of his refusal to accept such revised rate of premium, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance, the insurance provided hereunder shall ipso facto terminate.

7. Warranted that for and during the term of this policy the vessel is an American vessel as defined in Sec. 1201 (a), Public Law 763, 81st Congress, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this policy shall automatically terminate at the time of such change or requisition and daily pro-rata premium shall be payable to the date of termination.

8. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this endorsement or the policy to which it is attached is not paid within thirty days after receipt by the Assured of notice of the amount therof this insurance shall, notwithstanding any other provision for cancellation, become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

9. Warranted, no cancellation except by mutual consent except as provided in Paragraphs 6, 7 and 8 above.

Form MA-283 (B) (12-52)

CLAUSES FOR BUILDER'S RISK

(Post-launching Period—Excess)

Endorsement attached to and made a part of Policy WRBR _____ issued to _____.

The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder is $_____, being the excess of $_____ primary insurance and this insurance to pay only that part of any loss, damage or expense covered hereunder which is in excess of the amount payable under the primary insurance but the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the lower of (a) the amount insured hereunder or (b) the vessel's fair and reasonable value as determined in accordance with Public Law 763, 81st Congress, and any other applicable Acts of Congress, provided that the amount payable under (b) hereof shall not exceed the maximum sum which the Maritime Administrator, as underwriter, is authorized to pay under any applicable Acts of Congress, and provided further that in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with Section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. In the event the primary insurance is cancelled through the operation of any automatic termination clause applicable thereto, the amount insured under the policy to which this endorsement is attached shall, at an additional premium to be fixed by the Maritime Administrator, be automatically increased by the amount of the primary insurance and thereupon insurance under the policy shall become primary insurance and Paragraph 1 of this endorsement shall be deemed to be deleted herefrom and Paragraph 1 of endorsement Form MA-283(O) substituted therefor, all other terms and conditions to remain the same.

3. Whereas the value stated herein is provisional and is based upon the estimated contract price, the parties to this insurance agree that the full value of the subject matter of this insurance, to be ascertained in accordance with the completed contract, shall be the basis of this insurance. Should the value for insurance, determined as above—

(I) Exceed the value stated herein, the Assured agrees to declare to the Underwriter the amount of such excess and to pay premium thereon at the full policy rate, and the Underwriter agrees to accept its proportionate share of the increase, or

(II) Be less than the value stated herein, the sum insured by this policy shall be reduced proportionately and the Underwriter agrees to return premium, at the full policy rate, on the amount by which its line is reduced.

4. Premium shall be payable at the rate of _____ percent. In the event of cancellation of insurance hereunder by reason of early delivery of the vessel to return monthly pro-rata premium for each uncommenced month. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of the "Maritime Adm.-Commerce".

5. Attaching as of the date and time the vessel first becomes water-borne after launching and expiring as of the date and time the vessel is delivered by the builder. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

6. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this policy shall thereupon become null and void and of no effect as of Midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administrator, by telegraph of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance, the insurance provided hereunder shall ipso facto terminate.

7. Warranted that for and during the term of this policy the vessel is an American vessel as defined in Sec. 1201 (a), Public Law 763, 81st Congress, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this policy shall automatically terminate at the time of such change or requisition and daily pro-rata return of premium shall be made.

8. Trial trips held covered at a rate to be fixed by the Maritime Administrator.

9. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this endorsement or the policy to which it is attached is not paid within thirty days after receipt by the Assured of notice of the amount thereof this insurance shall, notwithstanding any other provision for cancellation, become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

10. Warranted, no cancellation except by mutual consent except as provided in Paragraphs 6, 7 and 9 above.

Form MA-283 (C) (12-52)

CLAUSES FOR BUILDER'S RISK

(Post-launching Period—Primary)

Endorsement attached to and made a part of Policy WRBR _____ issued to _____.

The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

1. The amount insured hereunder is $_____ but the amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed

the lower of (a) the amount insured hereunder or (b) the vessel's fair and reasonable value as determined in accordance with Public Law 763, 81st Congress, and any other applicable Acts of Congress, provided that the amount payable under (b) hereof shall not exceed the maximum sum which the Maritime Administrator, as underwriter, is authorized to pay under any applicable Acts of Congress, and provided further that in no event shall the amount of such liability to an insured owner exceed the value of the vessel as determined in accordance with Section 802, Merchant Marine Act, 1936, as amended, if the vessel is being built with the aid of a construction-differential subsidy.

2. Whereas the value stated herein is provisional and is based upon the estimated contract price, the parties to this insurance agree that the full value of the subject matter of this insurance, to be ascertained in accordance with the completed contract, shall be the basis of this insurance.

Should the value for insurance, determined as above—

(I) Exceed the value stated herein, the Assured agrees to declare to the Underwriter the amount of such excess and to pay premium thereon at the full policy rate, and the Underwriter agrees to accept its proportionate share of the increase, or

(II) Be less than the value stated herein, the sum insured by this policy shall be reduced proportionately and the Underwriter agrees to return premium, at the full policy rate, on the amount by which its line is reduced.

3. Premium shall be payable at the rate of _____ percent. In the event of cancellation of insurance hereunder by reason of early delivery of the vessel to return monthly pro-rata premium for each uncommenced month. Premium shall be payable thirty days after receipt by the Assured of notice of the amount thereof and payment shall be made by check payable to the order of "Maritime Adm.—Commerce".

4. Attaching as of the date and time the vessel first becomes water-borne after launching and expiring as of the date and time the vessel is delivered by the builder. Both dates and times shall be reported to the Underwriter as soon as known to the Assured.

5. The Underwriter shall have the right to change the rate of premium for this insurance at any time. Unless the revised rate of premium is accepted in writing by the Assured within fifteen days after receipt by the Assured of notice of the revised rate, this policy shall thereupon become null and void and of no effect as of Midnight, Standard Time at the location of the shipyard on the fifteenth day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen-day period during which this insurance remained in force unless the Assured, within such period, dispatches notice to the Maritime Administrator, by telegraph of his refusal to accept such revised premium rate, in which event premium at the revised rate shall be payable for that portion of the fifteen-day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance, the insurance provided hereunder shall ipso facto terminate.

6. Warranted that for and during the term of this policy the vessel is an American vessel as defined in section 1201 (a), Public Law 763, 81st Congress, and if at any time during that term the vessel ceases to be an American vessel as defined in the Act or is requisitioned by the Government of the United States, this policy shall automatically terminate at the time of such change or requisition and daily pro-rata return of premium shall be made.

7. Trial trips held covered at a rate to be fixed by the Maritime Administrator.

8. In the event any premium, either original or additional, which becomes due and payable under any of the provisions of this endorsement or the policy to which it is attached is not paid within thirty days after receipt by the Assured of notice of the amount thereof this insurance shall, notwithstanding any other provision for cancellation, become null and void and of no effect as of the commencement of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise.

9. Warranted, no cancellation except by mutual consent except as provided in Paragraphs 5, 6 and 8 above.

Form MA-283 (D) (12-52)

UNITED STATES OF AMERICA

WAR RISK CLAUSES FOR BUILDER'S RISK

Endorsement attached to and made part of Policy WRBR _____ issued to _____.

It is agreed that this insurance covers only those risks which would be covered by the attached policy (including running down liability under the Collision Clause) in the absence of the F. C. & S. warranty contained therein but which are excluded by that warranty. This insurance is also subject, however, to the following warranties and additional clauses:

1. The Adventures and Perils Clause shall be construed as including the risks of piracy, civil war, revolution, rebellion or insurrection or civil strife arising therefrom, floating and/or stationary mines and/or torpedoes whether derelict or not and/or military or naval aircraft and/or other engines of war including missiles from the land and weapons of war employing atomic fission or radioactive force and warlike operations and the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, but excluding arrest, restraint or detainment under customs or quarantine regulations, and similar arrests, restraints or detainments not arising from actual or impending hostilities or sanctions.

2. The provisions of the attached policy with respect to constructive total loss shall apply only to claims arising from physical damage to the insured vessel.

3. Warranted free from any claim for delay or demurrage and warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured.

4. Warrented free from any claim based upon loss of or frustration of the insured voyage or adventure caused by arrests, restraints or detainments, of kings, princes, or peoples.

5. Warranted free from any claim arising from capture, seizure, arrest, restraint, detainment, preemption, confiscation or requisition by the Government of the United States.

§ 308.409 *Reporting casualties and filing claims.* Casualties shall be reported promptly to, and all claim documents filed with, the Chief, Division of Insurance, Maritime Administration, Department of Commerce, Washington 25, D. C.

SUBPART F—WAR RISK CARGO INSURANCE

I—INTRODUCTION

§ 308.500 *Authority.* The Secretary of Commerce delegated authority to the Maritime Administrator to perform the functions vested in the Secretary of Commerce by title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress, except the authority "to find that insurance adequate to the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" which was reserved to the Secretary of Commerce. (Section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (Amended), published as section 5 (a) (2) (iii) in the FEDERAL REGISTER September 15, 1953, 18 F. R. 5518, 5519.)

§ 308.501 *Cargoes on which coverage is available.* When this order becomes effective as provided in § 308.551, the Maritime Administrator will be prepared to provide marine insurance against loss or damage by the risks of war under approved clauses on shipments of cargoes coming within one or more of the following categories:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Merchant Marine Act, 1936, as amended;

(b) Shipped or to be shipped on any foreign flag vessels owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

Cargo war risk insurance will be written under either an open policy or a facultative policy in accordance with the provisions of this subpart.

§ 308.502 *Additional insurance.* The assured may place increased value or additional insurance in other markets beyond the amount of insurance provided by the Maritime Administrator, but such insurance must be non-participating with the Maritime Administrator's coverage, and without benefit of salvage or right of contribution.

§ 308.503 *Rate schedules.* Rate schedules published by the Maritime Administrator may be obtained from an underwriting agent. All rate schedules are subject to change by the Maritime Administrator at any time without notice. If no rate is published for a voyage

on which war risk coverage is available, the Maritime Administrator will name a rate through an underwriting agent upon application.

§ 308.504 *Definition of territories and possessions.* Whenever reference is made to the territories and possessions of the United States in this subpart or in any supplement thereto or any policy of insurance issued pursuant to the provisions thereof, said territories and possessions shall be deemed to include only the Territory of Alaska, the Territory of the Hawaiian Islands, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, Wake Island, Midway Islands, and the Panama Canal Zone.

II—OPEN POLICY WAR RISK CARGO INSURANCE

§ 308.505 *General.* The Maritime Administrator is prepared to provide an open cargo war risk insurance policy covering any cargoes described in § 308.501. The policy will be in the standard form of War Risk Open Cargo Policy, Form MA-300, prescribed in § 308.517. All policies will be issued by underwriting agents appointed by the Maritime Administrator. All underwriting agents will be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

§ 308.506 *Application for an open cargo policy.* Application for an Open Cargo Policy shall be made by filing Form MA-301, prescribed in § 308.521, with an underwriting agent of the Maritime Administration. The application shall state the applicant's name and address; the person or persons to whom loss shall be payable; the nature and geographic scope of the shipments to be covered under the policy which shall not be broader than the coverage authorized in § 308.501; the requested effective date, which shall not be earlier than the date of the completion of the requirements for the issuance of the policy; and the basis of valuation to be incorporated in the policy. An applicant may specify one basis of valuation for imports and another for exports, and he may specify different bases of valuation for different commodities or voyages, provided that each basis of valuation specified by the applicant shall define the value by the use of facts which existed prior to the date of the shipment and which are readily ascertainable by either party after the safe arrival or loss of the shipment.

§ 308.507 *Security for payment of premiums.* Clause 21 of the policy requires the assured to maintain with the Maritime Administrator a collateral deposit fund or a surety bond, to secure the payment of the premiums, in an amount which shall at all times exceed the unpaid premiums on all risks which have attached under the policy. The minimum amount of the fund or of the surety bond shall be $1,000. Clause 21 also provides that, within seven (7) days from the time knowledge comes to the assured that the amount of the deposit or the surety bond is insufficient to meet the requirements of Clause 21, the assured shall deposit additional collateral or increase the surety bond in an amount not less than double the amount of such insufficiency, and for a sum which shall be a multiple of $500. If the assured fails to increase the deposit or the surety bond within the seven (7) day period, the policy automatically becomes void at the end of the seven (7) day period except as to risks which have attached prior to that date. The procedure for establishing a collateral deposit fund is prescribed in § 308.509, and the procedure for posting and maintaining a surety bond is prescribed in § 308.510. An application for the issuance of an open cargo policy shall be ineffective unless a collateral deposit fund is established and maintained, or a surety bond is posted and maintained, in accordance with the provisions of this section and §§ 308.509 and 308.510.

§ 308.508 *Issuance of an open cargo policy*—(a) *Time.* The underwriting agent will issue an Open Cargo Policy within fifteen (15) days after the completion by the applicant of the requirements set forth in §§ 308.506 and 308.507 unless the time for issuance is extended by the Maritime Administrator in writing. The underwriting agent may not make any Open Cargo Policy effective with respect to shipments attaching on a date earlier than the date when the application was completed, but he may make it effective on the date of the completion of the application or any date thereafter requested by the applicant.

(b) *Numbering.* Each Open Cargo Policy supplied to the underwriting agent by the Maritime Administrator shall be numbered by the Maritime Administration before it is supplied to the underwriting agent. No two numbers shall be the same. The underwriting agent when issuing the policy shall add at the end of the policy number the agency number assigned to that underwriting agent, and where policies are issued by more than one office of an underwriting agent the issuing office shall also be identified in the policy number. For example, policies issued by an office in New York will be designated by "NY" and policies issued in San Francisco will be designated by "SF" prefixed to the underwriting agent's agency number.

§ 308.509 *Collateral deposit fund*—(a) *Requirements.* An assured electing to use a cash collateral deposit fund pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of the Open Cargo Policy, Form MA-300, prescribed in § 308.517.

(b) *Cash or Government bonds.* To establish a collateral deposit fund the applicant shall deposit with the underwriting agent a check payable to the order of the "Maritime Adm.-Commerce" for the amount of the fund, or United States Government bonds having a par value at the time of deposit of the amount of the fund, which shall be a multiple of $500 but not less than $1,000, together with a letter of transmittal executed by the applicant on Form MA-302, prescribed in § 308.522. Upon receipt of the deposit, the underwriting agent shall assign a serial number to it and trasmit it to the Comptroller, Maritime Administration, Washington 25, D. C. It is the responsibility of the assured to make sure that this deposit fund is sufficient at all times to cover the premiums payable on all risks which have attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25.00 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, the Maritime Administrator may deduct from the assured's collateral deposit fund all amounts due.

(d) *Increase in amount of collateral as required by Clause 21.* If the assured fails to deposit additional collateral in the fund within seven (7) days from the time knowledge comes to the assured that the amount of collateral is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(e) *Changes in amount of collateral.* The assured may increase or decrease the amount of the collateral deposit fund by amounts of not less than $500 or multiples thereof, provided that the amount of the fund shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the collateral deposit shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of collateral in the fund shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(f) *Increase of collateral.* To increase the amount of the collateral on deposit in the fund, the assured shall transmit to the underwriting agent on Form MA-302, prescribed in § 308.522, a check payable to the order of the "Maritime Adm-Commerce" or United States Government bonds having a par value at the time of deposit of not less than the amount of the requested increase. The increase shall become effective upon the date of the receipt of the application and check or bonds by the underwriting agent as shown on Form MA-302.

(g) *Decrease of collateral.* To decrease the collateral deposit fund, the assured shall file with the underwriting agent an application on Form MA-305, prescribed in § 308.525. The decrease shall become effective upon the date of the receipt of the application by the underwriting agent as shown on Form MA-305.

(h) *Refund of collateral.* Whenever the assured becomes entitled to a refund of the collateral deposit, in whole or in part, by reason of a request for a partial return of such collateral, or the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the collateral deposit fund because the assured is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a surety bond in the place and stead of the collateral deposit fund, as provided in § 308.510 (j), the Maritime Administrator will refund to the assured the amount of the collateral deposit to which the assured is entitled; provided, however, that the repayment of such collateral shall not be made by the Maritime Administrator until the assured has filed a closing report and paid in full all premiums with respect to all shipments which had attached at the time of the receipt by the underwriting agent of the application for the refund, Form MA-305, and a certificate executed in duplicate on Form MA-306, prescribed in § 308.526, and, in the event of the substitution of a surety bond for the collateral deposit fund, the receipt by the underwriting agent of the surety bond properly executed, in accordance with § 308.510.

§ 308.510 *Surety bond*—(a) *Requirements.* An assured electing to post a surety bond pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of the Open Cargo Policy, Form MA-300, prescribed in § 308.517.

(b) *Amount of bond.* An applicant who wishes to post a surety bond shall deliver to the underwriting agent a surety bond on Form MA-308, prescribed in § 308.528, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500 but shall not be less than $1,000. Upon receipt of the surety bond, the underwriting agent shall assign a serial number to it and transmit it to the Comptroller, Maritime Administration, Washington 25, D. C. It is the responsibility of the assured to make sure that the amount of the bond is sufficient at all times to cover the premium payable on all risks which have attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Surety.* The sufficiency of the surety executing the bond shall be subject to approval by the Maritime Administrator. The underwriting agent may accept on behalf of the Maritime Administrator a surety bond executed by a surety named on the United States Treasury Department's approved list of sureties whose bonds are acceptable to the United States Treasury Department to secure obligations due the United States, provided the bond is within the maximum amount for which the surety is so authorized to write bonds as shown by the approved list.

(d) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25.00 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, all amounts due shall become a liability collectible under the surety bond and from the assured.

(e) *Increase in amount of bond as required by Clause 21.* If the assured fails to increase the amount of the surety bond within seven (7) days from the time knowledge comes to the assured that the amount of the bond is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(f) *Changes in amount of bond.* The assured may increase or decrease the amount of the surety bond by amounts of not less than $500 or multiples thereof, provided that the amount of the bond shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the bond shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of the bond shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(g) *Increase in amount of bond.* To increase the surety bond the assured shall transmit to the underwriting agent, on Form MA-310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety company on Form MA-311, prescribed in § 308.531. The increase shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA-311.

(h) *Decrease in amount of bond.* To decrease the amount of the bond, the assured shall transmit to the underwriting agent, on Form MA-310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety on Form MA-311, prescribed in § 308.531. The decrease shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA-311, except as to shipments which on that date are known or reported to the assured to be in transit and which have attached under the policy and upon which premium has not been paid in full.

(i) *Termination of bond.* Whenever the assured becomes entitled to a termination of a surety bond by reason of the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the surety bond by an assured which is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a collateral deposit fund in the place or stead of the surety bond, the underwriting agent shall execute a release on Form MA-312, prescribed in § 308.532. The release shall be made effective as of (1) the effective date of the cancellation of the policy when the bond is terminated for that reason, or (2) the date of the Maritime Administrator's directive waiving the requirement of a surety bond when the bond is terminated for that reason, or (3) the effective date of the establishment of a collateral deposit fund when the bond is terminated for that reason.

(j) *Substitution of bond for collateral deposit.* An assured may substitute a surety bond for a collateral deposit fund by delivering to the underwriting agent a surety bond on Form MA-309, prescribed in § 308.529, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500, but shall not be less than $1,000. The collateral deposit fund will be refunded to the assured after the bond has been posted, in accordance with the provisions of § 308.509 (h).

§ 308.511 *Cancellation of open cargo policy.* An assured may cancel an Open Cargo Policy by delivering to the underwriting agent, at least fifteen (15) days prior to the requested date of cancellation, an application for cancellation executed by the assured on Form MA-304, prescribed in § 308.524, together with the original policy. The policy shall be cancelled as of the effective date requested in the application, which, unless otherwise agreed by the Maritime Administrator in writing, shall not be a date earlier than fifteen (15) days following the date of the receipt of the application as acknowledged by the underwriting agent on Form MA-304, with respect to all risks that have not attached prior to said effective date. Such cancellation shall not relieve the assured of the obligation to file closing reports with respect to all risks which attached prior to the effective date of the cancellation and to pay all unpaid premiums. Within four (4) months of the effective date of cancellation, unless otherwise agreed by the Maritime Administrator in writing, the assured must file a closing report in duplicate on Form MA-313, prescribed in § 308.533, of all shipments covered by the policy for which closing reports have not been previously filed. The assured shall mark this closing report "Final Closing Report on Cancellation of Policy", and file a certificate on Form MA-313-B, prescribed in § 308.535, executed by the assured in duplicate. Thereafter when all unpaid premiums have been paid, the assured will become entitled to a refund of the collateral deposit, or cancellation of the surety bond in accordance with §§ 308.509 and 308.510. If the assured has lost or mislaid the original policy and is unable

to produce it for cancellation, the assured shall execute a letter of indemnity and such other documents as may be required by the Maritime Administrator.

§ 308.512 *Declaration of shipments under open cargo policy*—(a) *Closing report.* The assured must file with the underwriting agent, not later than the twenty-fifth day of each month, a closing report for all inward shipments and a closing report for all outward shipments, and pay the premium and fees, for all shipments covered during the preceding calendar month, as required by Clause 19. Each closing report shall be filed in duplicate on Form MA-313, prescribed in § 308.533, supported by a certificate executed by the assured on Form MA-313-A, prescribed in § 308.534. If the assured has no shipments to report during any calendar month, the closing report, Form MA-313, must nevertheless be filed with one or both of the following statements, depending upon their applicability, noted thereon:

(1) It is certified that no inward shipment coming within the scope of this policy arrived at destination during the preceding calendar month, and that during the preceding calendar month no knowledge has come to the assured of an inward shipment covered under the terms of the policy which will not arrive by reason of loss, frustration or other similar cause.

(2) It is certified that no outward shipment coming within the scope of this policy was made during the preceding calendar month.

Whenever a sea passage is made with respect to cargo covered under the policy by a barge or sailing vessel the assured shall note that fact upon the closing report, unless the Maritime Administrator otherwise agrees. An assured reporting for one calendar month must not include therein a report of a shipment due to be reported in the report for the next succeeding calendar month. Thus, the report of January closing shipments filed in February should not include February closings.

(b) *Inward shipments.* The closing report covering inward shipments shall include (1) all such shipments which have arrived at the port of destination during the preceding calendar month, and (2) all such shipments with respect to which inability to so arrive by reason of loss, frustration, or other similar causes has come to the knowledge of the assured during the preceding calendar month.

(c) *Outward shipments.* The closing report covering outward shipments shall include all such shipments which attached under the policy during the preceding calendar month.

(d) *Definition of inward and outward shipments.* A shipment will be classified as an inward shipment or as an outward shipment by reference to the geographical location of the assured with respect to the movement of the shipment. The address of the assured as stated in the application filed by him for the policy shall be deemed to be the assured's geographical location for the purpose of determining whether the shipment is inward or outward. To illustrate, if an assured has stated in his application that his address is in Hawaii, the assured's shipments of goods from the United States to Hawaii would be classified as inward, and his shipments from Hawaii to the United States would be classified as outward. Any shipments that cannot be classified as inward or outward under this definition shall be treated as inward shipments for the purposes of the declaration.

(e) *Supplemental closing report.* If an assured files a closing report and thereafter discovers that one or more additional shipments should have been included in the report, then, even though the assured has executed the certificate on Form MA-313-A, prescribed in § 308.534, or Form MA-313-B, prescribed in § 308.535, in connection with the closing report, the assured must nevertheless amend the closing report by filing a supplemental closing report supported by an appropriate certificate. The supplemental closing report must be accompanied by a statement in writing signed by the assured giving the reasons for the omission of such shipments from the original closing report. If the Maritime Administrator finds that the failure to file the complete closing report was either inadvertent or unintentional or arose by reason of causes beyond the control of the assured, the otherwise automatic termination of the policy by reason of a breach of the warranty embodied in Clause 20 shall be avoided pursuant to the provisions of Clause 23.

§ 308.513 *Payment of premiums and fees.* The assured must pay the premium, when his closing report is filed, for all shipments shown on his closing report for the preceding month, at the rates prescribed by the Maritime Administrator and in effect (a) on the date of the ocean bill of lading, or (b) if an ocean bill of lading was not issued, on the date of the equivalent shipping document, or (c) if no ocean bill of lading or equivalent shipping document was issued, or if such documents were undated, on the date the goods were laden on the overseas vessel, as required by Clause 19. All payments of premium or fees must be made by check or money order payable to the order of the "Maritime Adm.-Commerce".

§ 308.514 *Return premium.* No premium will be returned to the assured with respect to a shipment of goods that attached under the policy except where there was a declaration of value at variance with Clause 8, or an error in the application of a rate or in the computation of a premium, or the insured goods were short-shipped. An application for the return of a premium shall be made on Form MA-307, prescribed in § 308.527, filed in duplicate with the underwriting agent who will transmit it to the Maritime Administrator for payment.

§ 308.515 *Payment in event of loss.* All claims for losses shall be filed by the assured with the underwriting agent who issued the policy. Such claims must be supported by the customary documents required in connection with war risk insurance claims, together with appropriate declarations as required by Clause 9, and such further data as may now or hereafter be required by the Maritime Administrator.

§ 308.516 *Failure to comply with Clause 21.* (a) If the assured wilfully fails to maintain a collateral deposit fund or a surety bond in an amount sufficient to meet the requirements of Clause 21, the policy becomes void from the date the fund or bond was first insufficient, but, if the assured's failure was inadvertent, the policy may be reinstated when the assured complies with Clause 21, and shows to the satisfaction of the Maritime Administrator that his failure was inadvertent and not wilful. If the failure was in fact inadvertent, the assured shall file a declaration on Form MA-314, prescribed in § 308.536, executed in duplicate, with the underwriting agent within seven (7) days from the time knowledge comes to the assured of the insufficiency of the collateral deposit fund or surety bond unless the time for filing such declaration is extended by permission of the Maritime Administrator. If the space provided in the declaration, Form MA-314, for an explanation of the circumstances by which the assured first had knowledge that the collateral became exceeded is not sufficient, the assured should attach to the declaration a detailed statement and include the same by reference in the declaration.

(b) If any policy becomes void by reason of the failure of the assured to deposit additional collateral or increase the amount of its surety bond under the provisions of Clause 21, the Maritime Administrator reserves the right to refuse to issue another policy to such assured for a period of 90 days.

§ 308.517 *Open cargo policy, Form MA-300.* The following is the standard form of War Risk Open Cargo Policy:

Form MA-300 (7-54)

United States of America

Department of Commerce

Maritime Administration

War Risk Open Cargo Policy No. WROC ----

CLAUSE 1. *Assured.* The United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce (herein called the "Underwriter"), in consideration of the premiums as computed and agreed to be paid pursuant to Clause 19, and of the establishment and maintenance of a collateral deposit fund or the posting and maintenance of a surety bond pursuant to Clause 21, and in accordance with applicable provisions of law and subject to all limitations thereof, particularly title XII, Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "Act"), hereby insures ---------- (herein called the "Assured"), against War Risks Only, in accordance with the terms and conditions hereinafter set forth. This policy is issued on behalf of the Underwriter by ---------- (herein called the "Underwriting Agent").

CLAUSE 2. *Loss payable.* Loss, if any, payable, in funds current in the United States of America, to the order of the Assured thirty days after satisfactory proofs of loss and proofs of interest have been filed with the Underwriting Agent.

CLAUSE 3. *Goods insured.* To attach, as provided in clauses 5 and 13, upon all shipments of lawful goods and/or merchandise

consisting principally of _____ which come within one or more of the following categories, as required by section 1203 (b) of the Act:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

CLAUSE 4. *Insurable interest.* To cover all shipments:

(a) *By assured.* Shipped or consigned to, or by, the Assured for his account and risk;

(b) *By others for assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured;

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel;

(d) *Sold after attachment of risk.* Shipped to, by, or at the direction of the Assured and sold by the Assured subsequent to the attachment of risk hereunder on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods.

CLAUSE 5. *Attachment.* To attach, as provided in Clause 13, on all shipments made on or after _____:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

CLAUSE 6. *Conveyance.* By overseas vessels and connecting conveyances.

CLAUSE 7. *Voyages covered.* At and from _____ to _____.

CLAUSE 8. *Valuation.* Goods insured hereunder shall be valued at _____.

CLAUSE 9. *Limits on amount payable for loss*—(a) *Fair market value at commencement of risk.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value of the lost or damaged goods at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(b) *Fair market value at port of arrival.* If it is impossible to determine the fair market value at the place and approximate time of the attachment of risk, as provided in paragraph (a) of this clause, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value at the designated port of arrival on the date of the attachment of risk, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(c) *Purchase price less discount.* If the lost or damaged goods were purchased by the named Assured prior to loading on board the overseas vessel, the Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations provided for in paragraphs (a) and (b) of this clause, stating that the amount claimed does not exceed the actual amount paid or payable to the seller for the goods less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. If Standard Optional Endorsement No. 2, Form MA-300-B, has been executed, and if the lost or damaged goods were purchased by the principal named in Endorsement No. 2, the declaration provided for in this paragraph shall be signed by both the agent and the named principal.

(d) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations required by paragraphs (a), (b), or (c) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writings by the Maritime Administrator for good cause shown.

(e) *Criminal Code.* The declarations required to be filed pursuant to this clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

AMERICAN INSTITUTE WAR CLAUSES

CLAUSE 10. *War risks only.* This insurance is only against the risks of capture, seizure, destruction or damage by men-of-war, piracy, takings at sea, arrests, restraints, detainments and other warlike operations and acts of kings, princes and peoples in prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, or civil strife arising therefrom, and including the risks of aerial bombardment, floating or stationary mines and stray or derelict torpedoes and weapons of war employing atomic fission or radioactive force; but excluding claims for delay, deterioration and/or loss of market, and warranted not to abandon (on any ground other than physical damage to ship or cargo) until after condemnation of the property insured.

CLAUSE 11. *Arrests, restraints.* Warranted free from any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests, restraints or detainments.

CLAUSE 12. *Commandeering.* This insurance does not cover any loss or damage caused by or resulting from any of the following causes:

(a) Commandeering, preemption, requisition or nationalization by the government (de facto or otherwise) of the country to or from which the goods are insured.

(b) Seizure or destruction under quarantine or custom regulations.

CLAUSE 13. *Period covered.* (a) The insurance against the risks enumerated in Clause 10, except the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, referred to in Clause 13 (b) below, shall not attach to the interest hereby insured or to any part thereof—

(1) Prior to being on board an overseas vessel (for the purpose of this Clause 13 an overseas vessel shall be deemed to mean a vessel carrying the interest from one port or place to another where such voyage involves a sea passage by that vessel);

(2) After being discharged overside from an overseas vessel at the final port of discharge;

or

after the expiry of fifteen (15) days counting from midnight of the day of arrival of the overseas vessel at the final port of discharge whichever shall first occur;

(3) After expiry of fifteen (15) days from midnight of the day of arrival of the overseas vessel at an intermediate port or place to discharge the interest for on-carriage from that or any other port or place by another overseas vessel, but shall re-attach as the interest is loaded on the on-carrying overseas vessel. During the said period of fifteen (15) days the insurance remains in force whether the interest is awaiting transit or in transit between the overseas vessels.

(b) The insurance against the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, attaches as the interest hereby insured is first loaded on lighter, craft, or vessel after leaving the warehouse at point of shipment in transit for the destination declared hereunder, and ceases to attach as the interest is finally landed from the vessel, craft or lighter prior to delivery to warehouse at such destination.

If the contract of affreightment is terminated at a port or place other than the destination named therein such port or place shall be deemed the final port of discharge for the purpose of this clause.

It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control.

If anything contained in this policy shall be inconsistent with this Clause 13 it shall to the extent of such inconsistency be null and void.

CLAUSE 14. *Deviation.* This insurance shall not be vitiated by deviation, overcarriage, change of voyage, or by any error or unintentional omission in the description of interest, vessel or voyage, provided the same be communicated to the Underwriting Agent as soon as known to the Assured and an additional premium paid if required.

CLAUSE 15. *Sue and labor.* In case of any loss or misfortune, it shall be lawful and necessary to and for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or the Underwriter, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; and to the charges whereof, the Underwriter will contribute according to the rate and quantity of the sum hereby insured.

CLAUSE 16. *General average.* General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or as per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

CLAUSE 17. *Collision.* No claim shall be payable hereunder which arises from collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this paragraph "power" includes any authority maintaining naval, military or air forces in association with a power.

SPECIAL CLAUSES

CLAUSE 18. *Transit interrupted.* If the ordinary course of transit of the goods hereby insured is interrupted or terminated by the shipper, consignee, or Assured or any party acting on their behalf, this insurance shall forthwith terminate.

CLAUSE 19. *Closing report.* It is warranted that not later than the 25th day of each calendar month, the Assured will file with the Underwriting Agent closing reports in the manner and form required by such regulations as may be promulgated by the Maritime Administrator from time to time of all shipments coming within the scope of this policy.

(a) As to inward shipments as defined in section 308.512 of Maritime Administration General Order No. 75 such reports must include

(1) All shipments which have arrived at port of destination during the preceding calendar month, and

(2) All shipments with respect to which inability to so arrive by reason of loss frustration or other similar cause has come to the knowledge of the Assured during the preceding calendar month, and

(b) As to outward shipments as defined in section 308.512 of Maritime Administration General Order 75 which attached under the policy during the preceding calendar month.

And will pay premium thereon at the rate prescribed by the Maritime Administrator and in effect:

(1) On the date of the ocean bill of lading, or

(2) If an ocean bill of lading was not issued, on the date of the equivalent shipping document, or

(3) If no ocean bill of lading or equivalent shipping document was issued, or if such documents were undated, on the date the goods were laden on an overseas vessel.

CLAUSE 20. *Breach of policy.* It is understood and agreed that whenever any premium is not paid when due, or any closing report is not filed as prescribed by Clause 19 hereof, the effect is such that a breach of the policy terms and conditions has been made by the Assured, and the policy automatically ceases to insure any shipment which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium or closing report, unless within the said fifteen (15) day period, the premium is paid or the closing report as required by Clause 19 hereof is filed with the Underwriting Agent, and a reinstatement fee of Twenty-five ($25) Dollars is paid by check or United States Postal Money Order payable to the Order of the "Maritime Adm.-Commerce", together with the amount of premium due, if any.

CLAUSE 21. *Collateral.* It is warranted that the Assured will at all times maintain with the Maritime Administrator a Collateral Deposit Fund or that in lieu of such Collateral Deposit Fund a Surety Bond in the form prescribed by the Maritime Administrator will be filed with the Underwriting Agent and maintained in full force and effect for the purpose of securing payment of premium hereunder. In the event that the Assured inadvertently fails to maintain such a Collateral Deposit Fund or such a Surety Bond in an amount sufficient so that at all times such amount is in excess of the unpaid premium then or thereafter payable with respect to any or all risks which have attached under the terms of the policy, it shall be a condition of this insurance that unless the Assured shall within seven (7) days from the time such insufficiency comes to the knowledge of the Assured deposit additional collateral or increase the surety bond in an amount not less than double the amount of such insufficiency and for a sum which shall be in even multiples of $500, this policy shall be void at the end of such seven (7) day period except as to risks which shall have attached prior to such voidance of this policy.

Notwithstanding the foregoing, however, if the Maritime Adminstrator shall determine that the failure of the Assured to maintain a sufficient Collateral Fund or Surety Bond was wilful rather than inadvertent, said policy shall be void from the date said Collateral Fund or Surety Bond was first insufficient to secure the premiums on risks which would otherwise have attached hereunder.

CLAUSE 22. *Books and records.* The Assured warrants and agrees that it will regularly keep books, records and accounts in such manner and form that all information available to the Assured as to the amounts at risk and the amounts of losses incurred and premiums due can be readily ascertained therefrom by the Maritime Administrator. The Assured, as often as may be reasonably required, shall exhibit such books, records and accounts to any person designated by the Maritime Administrator, and submit to examinations under oath by any person named by the Maritime Administrator, and subscribe the same.

CLAUSE 23. *Unintentional error.* This insurance shall not be invalidated by any error, or omission in the filing of Closing Reports which is demonstrated to the satisfaction of the Maritime Administrator to have been inadvertent or unintentional, or by any failure to report which is demonstrated to the satisfaction of the Maritime Administrator to have arisen from causes beyond the control of the Assured. The Maritime Administrator, or his representative duly authorized in writing, may waive strict compliance with any warranty or condition of this insurance to the extent that he may determine that it imposes a hardship on any claimant in good faith hereunder which would not be imposed in connection with a policy issued in accordance with commercial practice in the marine insurance business, and to the extent that he may determine that such waiver is not contrary to the provisions of title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress, under which the Policy is issued. In any determination as aforesaid the decision of the Maritime Administrator, or his duly authorized representative, shall be conclusive upon all parties thereto.

CLAUSE 24. *Goods excluded.* This policy does not cover shipments of specie, currency, securities, valuable documents, jewelry, precious stones, gold and silver and other precious metals, nor any articles transported by means of ordinary mail or air-mail or registered mail or parcel post.

CLAUSE 25. *Special coverage.* No shipment of cargo coming within the scope of this policy shall attach hereunder subsequent to the sailing of the carrying vessel from the original port of loading with respect to such cargo. Notwithstanding the foregoing provision an Assured may specially declare to his Underwriting Agent any shipment excluded from coverage by the preceding sentence, in which event insurance shall attach hereunder, if vessel and interest insured is safe in port on date of such declaration, or shall attach upon the safe arrival of vessel and interest insured at first port thereafter, warranted no known or reported loss of or damage to said vessel and interest insured at time of attachment.

CLAUSE 26. *Partial loss.* In case of partial loss by perils insured against, the proportion of loss shall be determined by a separation of the damaged portion of the insured property from the sound and by an agreed estimate (by survey) of the percentage of damage of such portion; or if such agreement is not practicable, then by public sale of such damaged portion for the account of the owner of the property, and by comparison of the amount so realized with the applicable valuation limit provided in Clause 9.

CLAUSE 27. *Labels clause.* In case of damage affecting labels, capsules or wrappers, the Underwriter, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall the Underwriter be liable for more than the insured value of the damaged merchandise.

CLAUSE 28. *Carrier clause.* Warranted that this insurance shall not insure, directly or indirectly, to the benefit of any carrier or bailee.

CLAUSE 29. *Notice of loss.* In the event of loss which may give rise to a claim under this policy, prompt notice must be given to the Underwriting Agent.

CLAUSE 30. *Rules and regulations.* This policy is subject to all rules and regulations pertaining hereto which may now or hereafter from time to time be published in the FEDERAL REGISTER.

CLAUSE 31. *Cancellation.* This policy may be canceled at any time upon 15 days written or telegraphic notice to or by the Assured or 15 days subsequent to the publication of a notice of cancellation in the FEDERAL REGISTER or at such other date as may be mutually agreed: Provided, however, that no such cancellation shall terminate this policy with respect to any shipments which have become a risk under the terms hereof prior to the effective date of such notice.

CLAUSE 32. *Amendments.* This policy may be amended by endorsement attached hereto and executed on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, by a duly authorized Underwriting Agent pursuant to prior written or telegraphic instructions from the Maritime Administrator or by publication of an amendment to the Open Cargo Policy form in the FEDERAL REGISTER. In the latter event

such amendment shall become effective upon the date of the publication of the amendment in the FEDERAL REGISTER or upon such date as may be specified therein: *Provided, however,* That no amendment which is restrictive in effect upon an Assured shall become effective prior to 48 hours after the date of such publication and no such restrictive amendment shall affect any shipments which shall have attached hereunder prior to the effective date of such amendment. In the event that the Assured is unwilling to accept any amendment to this policy, he shall have the option of terminating this policy as of the effective date of such amendment upon written or telegraphic notice to the Maritime Administrator through the Underwriting Agent prior to such effective date.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this policy, but this policy shall not be valid unless countersigned by an authorized Underwriting Agent.

UNITED STATES OF AMERICA,
By: Maritime Administrator, Acting for the Secretary of Commerce.

Maritime Administrator

The Underwriting Agent does not, by countersigning and issuing this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this policy, but acts solely under the power conveyed to the Underwriting Agent by an agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned this ____ day of _____ 195__.

Underwriting Agent
By: _____

Address of Underwriting Agent for receiving notices of loss _____.

§ 308.518 *Standard optional endorsement No. 1, Form MA-300-A.* Standard Optional Endorsement No. 1 limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. An Assured may elect to have his Open Cargo Policy endorsed with Standard Optional Endorsement No. 1 applicable (a) on all shipments, or (b) on all outward shipments, or (c) on all inward shipments, or (d) on named commodities except goods sold by the Assured prior to loading on board the overseas vessel and shipped for the account and at the risk of third persons other than a branch subsidiary or affiliate of the Assured. When an Assured has elected to have Standard Optional Endorsement No. 1 made applicable to certain named commodities he may not change to a different basis of valuation for those commodities until after he has given ninety (90) days written notice to the Maritime Administrator through the Underwriting Agent of his election to make the change. Application for Standard Optional Endorsement No. 1 may be made to the Underwriting Agent who is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 1:

Form MA-300-A (7-54)

United States of America

Department of Commerce

Maritime Administration

Standard Optional Endorsement No. 1

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC ____, issued to: _____. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Limits on amount payable for loss.* Clause 9 of the Open Cargo Policy is hereby deleted and the following substituted therefor:

CLAUSE 9. *Limits on amount payable for loss*—(a) *Actual pecuniary loss.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profits arising out of the insured venture. If claim is filed by the Assured named herein on behalf of any other person at interest, the declaration shall include a statement that the amount collectible does not exceed the amount which would have been collectible by the Assured named herein if at the time of the loss the Assured named herein had full interest in the insured goods. If this policy is issued to an agent for account of a principal named herein, both the agent and the named principal shall be required to sign the declaration provided for in this Clause.

(b) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declaration required by paragraph (a) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(c) *Criminal code.* The declarations required to be filed pursuant to this Clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after _____:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

§ 308.519 *Standard optional endorsement No. 2, Form MA-300-B.* Standard Optional Endorsement No. 2 amends the policy to cover shipments made to the Assured or shipped by the Assured as agent for the account and risk of a principal. Application for Standard Optional Endorsement No. 2 may be made to the underwriting agent, who is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 2:

Form MA-300-B (7-54)

United States of America

Department of Commerce

Maritime Administration

Standard Optional Endorsement No. 2

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC _____, issued to: _____. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Agent for principal.* This policy covers all shipments otherwise coming within the scope of this policy but shipped to or consigned to the Assured, or shipped by the Assured, and for the account and risk of _____ (herein called the "Principal"). The Assured warrants that he is a duly authorized agent of the Principal for the purposes of the insured transaction. The Assured warrants that closing reports as provided for by the terms of this policy and by the terms of General Order 75 of the Maritime Administration and supplements thereto will be filed by him with respect to all shipments insured hereunder, and subject to all the conditions and regulations of the Maritime Administrator relating to such reports. In the event of loss, any sums payable under the terms of this policy shall be paid to the order of the Principal. In the event of loss, the Assured acting as agent for the Principal shall file the declarations called for by the terms of this policy, but if the Principal is domiciled in the United States of America, or any possessions or territories thereof as defined in Maritime Administration General Order 75, or any amendments thereto, or maintains regular office or place of business therein, the Principal shall be required to file a similar declaration. In the event of loss the amount collectible hereunder shall not exceed the amount which would have been collectible by the Principal if he were named as the Assured hereunder.

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after _____:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessels on or after said date.

§ 308.520 *Standard optional endorsement No. 3, Form MA-300-C.* Standard Optional Endorsement No. 3 amends the policy to include shipments of diamonds for industrial purposes, or rubies or sap-

phires, natural or synthetic, used for instruments or watch jewels imported to the Continental United States (excluding Alaska). Application for Standard Optional Endorsement No. 3 may be made to the Underwriting Agent who shall transmit it to the Maritime Administrator for approval or disapproval of the issuance of the endorsement. The following is the Standard Form of Optional Endorsement No. 3:

Form MA-300-C (7-54)

United States of America

Department of Commerce

Maritime Administration

Standard Optional Endorsement No. 3

This endorsement is attached to and made a part of War Risk Open Cargo Policy No. WROC ____, issued to: _____. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Precious stones.* Shipments of _____, to the Continental United States (excluding Alaska) are hereby covered, subject to all the terms and conditions of this policy not in conflict herewith. It is warranted by the Assured that the Underwriter shall not be liable for more than two hundred fifty thousand ($250,000) dollars in any event by loss or damage in respect to shipments by any one vessel under the terms of this endorsement. It is further warranted by the Assured that no shipments will attach hereunder until a qualified officer of the overseas vessel has receipted for the goods covered by this endorsement by acknowledging deposit of the same in the safe or strong room of the carrying vessel.

CLAUSE B. *Effective date.* This endorsement shall be effective on all shipments made on or after _____:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessels on or after said date.

§ 308.521 *Application for open cargo policy, Form MA-301.* The following is the standard form of application for a War Risk Open Cargo Policy:

Form MA-301 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for War Risk Open Cargo Policy

Application is made for a War Risk Open Cargo Policy of insurance in the standard form prescribed in section 308.517 of General Order 75 of the Maritime Administration, pursuant to title XII, Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress, and in accordance with all provisions of law and subject to all limitations thereof:

1. *Assured.* Assured to be: _____
(Name)

_____ _____ _____ _____
(Number) (Street) (City) (Zone)

_____ _____
(County) (State)

2. *Loss payable.* Loss, if any, to be payable in funds current in the United States of America to the order of the Assured.

3. *Goods insured.* Insurance to cover all shipments of lawful goods or merchandise consisting principally of _____ which come within one or more of the following categories, as required by section 1203 (b) of the Merchant Marine Act, 1936, as amended:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessel, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

Applicant requests that Optional Endorsement No. 3 be attached to the policy. Yes ☐. No ☐. If "yes" is checked state the reasons for your request and designate the goods to be covered by the endorsement. (The endorsement will not be issued without the written approval of the Martime Administrator.)

_____

4. *Insurable interest.* To cover all shipments as indicated below by a check made in the appropriate square:

(a) *By assured.* Shipped or consigned to or by, the Assured for his account and risk. Yes ☐. No ☐.

(b) *By others for assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured. Yes ☐. No ☐.

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge will be received by the Assured from the Purchaser prior to loading of the goods on board the overseas vessel. Yes ☐. No ☐.

(d) *Sold after attachment of risk.* Shipped to, by, or at the direction of the Assured and sold by the Assured subsequent to the attachment of risk under the policy on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods. Yes ☐. No ☐.

(e) *Agent for principal.* Shipped to or consigned to the Assured, or shipped by the Assured as Agent for the Account and risk of _____
(Name)

_____ _____ _____ _____
(Number) (Street) (City) (Zone)

_____ _____ as Principal.
(County) (State)

Applicant warrants that he is a duly authorized agent of the Principal for the purpose of the insured transaction, and that closing reports as provided for by Clause 19 of the policy and by the terms of General Order 75 of the Maritime Administration and amendments thereof will be filed by him with respect to all shipments insured under the policy. Applicant requests that Standard Optional Endorsement No. 2 be attached to the policy. Yes ☐. No ☐.

5. *Attachment.* To attach, as provided in Clause 13 of the standard form of policy, on all shipments made on or after _____ (which shall not be earlier than the date of the completion of the requirements for the issuance of the policy):

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

6. *Conveyance.* By overseas vessels and connection conveyances.

7. *Voyages covered.* At and from _____ to _____.

8. *Valuation.* Goods insured under the policy shall be valued at _____. Applicant requests that Standard Optional Endorsement No. 1 be attached to the policy. Yes ☐. No ☐.

9. *Rates of premium.* The rates of premium shall be determined by the Maritime Administrator.

10. *Security for payment of premium.* This application is accompanied by (strike out inapplicable provisions):

(a) Letter of transmittal for a Collateral Deposit Fund with check or United States Government Bonds for $_____.

(b) Surety Bond A, executed by the applicant as principal and _____ (surety company) as surety for $_____.

Dated: _____, 195__.

_____
(Applicant)

By: _____
(Title)

This application must be accompanied by either (a) letter of transmittal for a Collateral Deposit Fund with accompanying check, or United States Government Bonds, or (b) Surety Bond A executed by the Assured as Principal and by the Surety, complying in either case with all applicable provisions of Maritime Administration General Order 75, and supplements thereto.

§ 308.522 *Collateral deposit fund, letter of transmittal, Form MA-302.* The following is the standard form of letter of transmittal for use in establishing a collateral deposit fund:

Form MA-302 (7-54)

Collateral Deposit Fund

Transmittal Letter

Policy No. WROC _____.
Amount Enclosed $_____.
To: Maritime Administrator,
c/o _____, Underwriting Agent.

Enclosed herewith is *check drawn to the order of the "Maritime Adm.-Commerce" or *United States Government Bond in the above sum to be held by the Maritime Administrator as a collateral deposit fund under the above numbered Open Cargo Policy pursuant to all of the terms and conditions of

*Strike out inapplicable words.

said policy, and such additional conditions and regulations as may be promulgated from time to time by the Maritime Administrator and published by the Maritime Administrator in the FEDERAL REGISTER as provided in said policy.

Dated: _____

_____
(Assured)

By _____
(Title)

Received on _____, and collateral sent
(Date)
by registered mail to the Comptroller, Maritime Administration, Washington, D. C., on _____.

_____
(Underwriting Agent)

By: _____

§ 308.523 *Application for revision of open cargo policy, Form MA-303.* An application for the revision of an Open Cargo Policy must be filed in duplicate with the Underwriting Agent on the following form:

Form MA-303 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for Revision of Open Cargo Policy

The Assured hereby requests that the following change be endorsed upon the War Risk Open Cargo Policy No. WROC ____ issued and countersigned by _____,
(Name of Underwriting Agent)
effective on all shipments made on or after* _____:

*This date must not be earlier than the day of receipt of this application by the Underwriting Agent by whom the policy was issued unless otherwise specially authorized in writing by the Maritime Administrator.

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents, dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date: _____.

(If this form does not contain sufficient space to set forth the desired changes, attach another sheet of paper hereto, and incorporate the same by reference.)

_____
(Assured)

_____
(Address)

By: _____

_____
(Title)

(Do not use this space)

§ 308.524 *Application for cancellation of open cargo policy, Form MA-304.* The following is the standard form of application for cancellation of an Open Cargo Policy:

Form MA-304 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for Cancellation of Open Cargo Policy

Please cancel Open Cargo Policy No. WROC ____ effective on shipments made on or after _____:*

(a) Under ocean bills of lading dated on or after said date, or

*Strike out inapplicable part.

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

_____
(Assured)

By: _____

_____
(Title)

The original Policy No. WROC ____ was received by the Underwriter on _____ 195__.

_____
(Underwriting Agent)

By: _____

*NOTE: The effective date of this cancellation must be a date not earlier than 15 days following the receipt of this application for cancellation as acknowledged by the Underwriting Agent unless otherwise agreed by the Maritime Administration in writing.

§ 308.525 *Application for decrease in amount of cash collateral fund, Form MA-305.* The following is the standard form of application for decrease in the amount of the cash collateral deposit fund:

Form MA-305 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for Decrease in Amount of Cash Collateral Fund

Please decrease the amount of the Collateral Deposit maintained to secure the payment of premiums under Open Cargo Policy No. WROC ____ by refunding $_____. The Assured agrees that for all purposes except for the actual repayment of the requested refund, payment shall be considered as made at the date that the Underwriting Agent acknowledges receipt of this request.

Date: _____.

_____
(Assured)

By: _____

_____
(Title)

Receipt is hereby acknowledged of the application for decrease in amount of Collateral Deposit by the sum of _____ Dollars ($_____), this ____ day of _____, 195__. Actual repayment of money will be made according to the terms and conditions of the Open Cargo Policy and applicable regulations.

_____
(Underwriting Agent)

By: _____

§ 308.526 *Certificate for repayment of decrease of collateral deposit fund, Form MA-306.* The following is the standard form of certificate for repayment of the amount of the decrease of the collateral deposit fund:

Form MA-306 (7-54)

United States of America

Department of Commerce

Maritime Administration

Certificate for Repayment of Decrease of Collateral Deposit Fund

_____,
(Name of person certifying)
certifies under the penalties of perjury that:

(He) (She) is an officer, to wit: _____
(Title)

of the _____,
(Name of Corporation or company)

insured under Open Cargo Policy No. WROC ____

or*

(He) (She) is the assured named in Open Cargo Policy No. WROC ____ and is familiar with all matters pertaining thereto.

That the refund of _____ Dollars ($_____) was effected as of the _____ day of _____, 195__, but has not yet been repaid; that all premiums accrued by reason of the attachment of all known or reported risks covered under Open Cargo Policy No. WROC ____ up to the time of the receipt of Surety Bond B on the ____ day of _____, 195__, by _____, the Underwriting Agent, have been paid in full and the unpaid premium accrued by reason of the attachment of any and all known or reported risks since said date and at the date of this certificate is not greater than _____ Dollars ($_____), the amount remaining on deposit if payment is made as herein requested.

Date: _____.

_____

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

§ 308.527 *Application for return premium, Form MA-307.* An application for the return of premium must be filed in duplicate with the Underwriting Agent in the following form:

Form MA-307 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for Return Premium Open Cargo Policy

Do not fill out this space

Premium paid _____

Checked by Underwriting Agency _____

Checked by Clearing Organization _____

Approved by:

_____

Maritime Administrator, Acting for the Secretary of Commerce of the United States of America.

Assured _____ Policy Number____

Address _____ Date of Payment__

Underwriting Agent ___

Nature of Cargo_____

INSURANCE DECLARED

Quantity (tons, barrels, bales, etc.)	Amount of insurance	Rate	Premium
Total			

INSURANCE AT RISK

Total			

Return Premium _____.

Remarks: _____. Application is hereby made for return premium as set forth above.

Date: _____.

_____
(Assured)

By: _____

_____
(Title)

Certificate

----------,
(Name of person certifying)
certifies under penalties of perjury that:
(He) (She) is an officer, to wit: ---------
of the ----------,
(Name of Corporation or Company)
insured under Open Cargo Policy No. -----.
or*
(He) (She) is the Assured named in Open Cargo Policy No. ------ and is familiar with all matters pertaining thereto; and that the information set forth in said application is in all respects true and correct and is made to induce the Maritime Administrator to return part or all of the premiums heretofore paid by said Assured to said Maritime Administrator for Open Cargo War Risk Insurance. The application is made with full knowledge that the Maritime Administrator will rely on the information set forth therein.

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*Strike out inapplicable part.

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

§ 308.528 *Surety bond A, Form MA-308.* The following is the Standard Form of Surety Bond A to be used by an Assured who elects to post a surety bond as security for payment of the premiums pursuant to Clause 21 of the policy:

Form MA-308 (7-54)

Surety Bond A

War Risk Open Cargo Policy No. WROC ----

Know all men by these presents, That we ---------- of ----------, as Principal, and ---------- of ----------, as Surety, are held and firmly bound unto the United States of America in the sum of ------ Dollars ($------), to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas ----------, Principal, under application dated ---------- has applied for the issuance of a War Risk Open Cargo Policy by the Maritime Administrator acting for the Secretary of Commerce of the United States of America, and

Whereas, the Maritime Administrator has agreed to accept this bond as a guarantee of the payment of all premiums due and payable under the terms and conditions of the Open Cargo Policy when issued, or endorsements thereto or modifications thereof, whether or not consented to by the Surety.

Now, therefore, if the Principal shall well and truly pay unto the Maritime Administrator acting for the Secretary of Commerce of the United States of America the premiums due under the Policy at the times and in the manner provided therefor in the Policy, then this obligation is to be void; otherwise to remain in full force and effect;

This bond is executed by the Surety, upon the following conditions:

1. If the Principal shall fail to file with the Underwriting Agent of the Maritime Administrator on or before the 25th day of each month during which this bond is in effect, a certified closing report as required by the policy showing the values of all shipments covered under the policy during the preceding calendar month and concurrently therewith pay to the Underwriting Agent the premiums called for by the closing report, then the Underwriting Agent shall so notify the Surety as soon as practicable and, in such event the Surety shall not be liable for any premiums accruing on risks attaching under the Policy subsequent to the date of such notice.

2. This bond may be terminated by either the Principal or the Surety at any time upon fifteen (15) days written or telegraphic notice to the Maritime Administrator, Washington 25, D. C., but such termination shall not affect the liability of the Principal or the Surety hereunder for premiums on risks attaching under the Policy on or prior to expiration of said fifteen (15) days period.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ---- day of ---------, 195--, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)
By: ---
Attest ---

(Surety)
By: ---
Attest ---

NOTE: The Maritime Administrator requires the signature by or on behalf of the Assured to appear on this bond.

§ 308.529 *Surety Bond B, Form MA-309.* The following is the Standard Form of Surety Bond B to be used by an Assured who elects to substitute a surety bond for a collateral deposit fund:

Form MA-309 (7-54)

Surety Bond B

War Risk Open Cargo Policy No. WROC ----

Know all men by these presents, That we ---------- of ----------, as Principal, and ---------- of ----------, as Surety, are held and firmly bound unto the United States of America in the sum of ---------- Dollars ($------), to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas the Maritime Administrator has issued and delivered to ----------, Principal, on the ---- day of ----------, 195--, that certain War Risk Open Cargo Policy No. WROC ----, and

Whereas, the Maritime Administrator acting for the Secretary of Commerce of the United States of America has agreed to accept this bond as a guarantee of the payment of all premiums due and payable under the terms, and conditions of said Policy or endorsements thereto or modifications therof whether or not consented to by the Surety.

Now, therefore, if the Principal shall well and truly pay unto the Maritime Administrator acting for the Secretary of Commerce of the United States of America the premiums due under the said Policy at the times and in the manner provided therefor in the Policy, then this obligation is to be void; otherwise to remain in full force and effect;

This bond is executed by the Surety, upon the following conditions:

1. If the Principal shall fail to file with the Underwriting Agent of the Maritime Administrator on or before the 25th day of each month during which this bond is in effect, a certified closing report as required by the policy showing the values of all shipments covered under the policy during the preceding calendar month and concurrently therewith pay to the Underwriting Agent the premiums called for by the closing report, then the Underwriting Agent shall so notify the Surety as soon as practicable; and, in such event the Surety shall not be liable for any premiums accruing on risks attaching under the Policy subsequent to date of such notice.

2. This bond may be terminated by either the Principal or the Surety at any time upon fifteen (15) days written or telegraphic notice to the Maritime Administrator, Washington 25, D. C., but such termination shall not affect the liability of the Principal and the Surety hereunder for premiums on risks attaching under the Policy on or prior to expiration of said fifteen (15) days period.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ---- day of ---------, 195--, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)
By: ---
Attest: ---

(Surety)
By: ---
Attest: ---

NOTE: The Maritime Administrator requires the signature by or on behalf of the Assured to appear on this bond.

§ 308.530 *Letter requesting increase or decrease in amount of surety bond, Form MA-310.* The following is the Standard Form of Letter of Transmittal, for use in transmitting to the Underwriting Agent an endorsement increasing or decreasing the amount of the surety bond:

Form MA-310 (7-54)

Letter of Transmittal

Increase or Decrease of Surety Bond

To: Maritime Administrator,
% ----------, Underwriting Agent.
Re: War Risk Open Cargo Policy No. WROC ----.

Dear Sir:

(Increase)* (decrease) is desired in amount of Surety Bond of ---------- Company dated the ---- day of ----------, 195--, in accordance with the terms of the endorsement submitted herewith.

(Assured)
By: ---

(Title)

§ 308.531 *Endorsement of surety bond increasing or decreasing amount of coverage, Form MA-311.* The following is the Standard Form of Endorsement to be used in increasing or decreasing the amount of a surety bond:

Form MA-311 (7-54)

Surety Bond

Endorsement No. ----

War Risk Open Cargo Policy No. WROC ----

To be attached to and form a part of Surety Bond No. ---- of the ---------- (Surety Company) in the amount of ------ Dollars, ($------).

In consideration of (increase*) (decrease) premium charged for the attached bond, it is understood and agreed as follows:

1. The amount of the attached bond is hereby (increased*) (decreased) from ------ Dollars ($------) to ------ Dollars ($------) as to such and so many of the premiums required to be paid under the Open Cargo Policy No. ----, issued by the Maritime Administrator, acting for the Secretary of Commerce of the United States of America, re-

*Strike out inapplicable word.

ferred to in the attached bond, as accrued after the day, month, year of the receipt of this endorsement as acknowledged below by an Underwriting Agent for the Maritime Administrator acting for the Secretary of Commerce of the United States of America: Provided, That, regardless of the number of changes made in the amount of the attached bond, no amount carried under the attached bond during any period, whether the original amount or any subsequent amount, shall be cumulative with any amount or amounts carried under the attached bond during any other period or periods.

2. The attached bond shall be subject to all its terms, conditions and limitations except as herein expressly modified.

Signed, sealed and dated the ____ day of _____ 195__.

Attest: _____

_____
(Principal)

By: _____

_____
(Surety)

Attest: _____
(Title)

By: _____

Receipt of this endorsement is hereby acknowledged subject to the rules and regulations of the Maritime Administrator, acting for the Secretary of Commerce of the United States of America, this ____ day of _____, 195__, and shall become effective according to its terms as of this date.

_____
(Underwriting Agent)

By: _____

§ 308.532 *Release of surety bond, Form MA-312.* The following is the Standard Form of Release of Surety bond:

Form MA-312 (7-54)

Release of Surety Bond

War Risk Open Cargo Policy No. WROC ____

Whereas _____ has made application to the Maritime Administrator, acting for the Secretary of Commerce of the United States of America, for the termination of Bond No. _____ of the _____ (Surety Company) effective _____ in accordance with Paragraph 2 of the conditions of said bond.

It is hereby understood and agreed that _____ (Surety Company) is relieved of any and all liability under Bond No. _____ for premiums or risks attaching after _____.

Dated at _____ this ____ day of _____ 195__.

Maritime Administrator,
Acting for the Secretary of Commerce.

By: _____
(Underwriting Agent)

By: _____

§ 308.533 *Closing report, Form MA-313.* The following is the Standard Form of Closing Report which must be filed in duplicate with the Underwriting Agent not later than the 25th day of each month:

Budget Bureau No. 41-R1666
Approval Expires June 30, 1957

Form MA-313
(7-54)

U. S. Department of Commerce
Maritime Administration

Monthly Closing Report

For the month _____, 19__

NOTE: To be filed in duplicate. This report must be certified as provided on the reverse hereof.

Do Not Use This Space	Check deposited
Rate verified _____	Date _____
Premium verified _____	
Footings verified _____	
Summary posted _____	

Assured _____

Agent's No. _____ Policy No. _____ Closing Report No. _____ Receipt No. _____

Risk No.	Shipping document		Marks and numbers	Quantity of goods	Type of goods or merchandise	Voyage	Inward shipment arrival date or outward shipment dispatch date	Amount	Rate	Premium	Remarks
	Type	No.									

§ 308.534 *Certificate to be attached to closing report, Form MA-313-A.* The following is the Standard Form of Certificate to be attached to the closing report required to be filed each month:

Form MA-313-A (7-54)

Certificate To Be Attached to Closing Report

War Risk Open Cargo Policy No. WROC ____

_____,
(Name of person certifying)

certifies under the penalties of perjury that:

(He) (she) is an officer, to wit: _____
(Title)

of the _____
(Name of Corporation or Company)

insured under Open Cargo Policy No. WROC ____

or*

(He) (she) is the assured named in Open Cargo Policy No. WROC ____ and does hereby certify, warrant, represent and affirm on (his*) (her) own behalf and on behalf of said Assured* that the (closing reports*) (set of closing reports), to which this certificate pertains, contains in all respects a true, accurate and complete list of all goods covered under said Open Cargo Policy required to be reported on a closing form by the terms and conditions of said Open Cargo Policy for the calendar month ending _____, 195__.

The (closing report*) (set of closing reports) is furnished by the Assured and this certificate is made by the Undersigned pursuant to the terms and conditions of the Policy and is furnished by the Assured and by the Undersigned with full knowledge that the Maritime Administrator acting for the Secretary of Commerce will rely thereon, and with the intent and purpose of inducing the Maritime Administrator to rely thereon.

Date _____

_____

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

*Strike out inapplicable word.

§ 308.535 *Certificate to be attached to final closing report, Form MA-313-B.* The following is the Standard Form of Certificate to be attached to the final closing report after cancellation of the policy:

Form MA-313-B (7-54)

Certificate To Be Attached to Final Closing Report

War Risk Open Cargo Policy No. WROC ____

_____,
(Name of person certifying)

certifies under the penalties of perjury that:

(He) (she) is an officer, to wit: _____
(Title)

of the _____
(Name of Corporation or Company)

insured under Open Cargo Policy No. WROC ____

or*

(He) (she) is the Assured named in the Open Cargo Policy No. WROC ____ and does hereby certify, warrant, represent and affirm on (his*) (her) own behalf and on behalf of said Assured* that the information in the "Final Closing Report on Cancellation of the Policy," to which this Certificate pertains, contains in all respects a true, accurate and complete list of all shipment of goods covered by Open Cargo Policy No. WROC ____ made at any time which have not previously been reported; that the check tendered in payment of premium with the "Final Closing Report on Cancellation of Policy" pays in full any and all unpaid premium which at any time became due and payable under that Policy.

This certificate is furnished by the Undersigned pursuant to the terms and conditions of the Policy with the intent and the full knowledge of the Undersigned and the Assured that the Maritime Administrator, acting for the Secretary of Commerce of the United States of America, will rely thereon in authorizing the refund of the collateral deposit maintained by the Assured for securing the payment of premium under the Policy.

Date: _____

_____

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

§ 308.536 *Declaration where failure to comply with Clause 21 was inadvertent, Form MA-314.* The following is the Standard Form of Declaration to be filed by an Assured if he fails inadvertently to maintain a collateral deposit fund or surety bond in an amount sufficient to meet the requirements of Clause 21 of the Policy:

Form MA-314 (7-54)

Declaration Where Failure To Comply With Clause 21 Was Inadvertent

War Risk Open Cargo Policy No. WROC ____

_____,

(Name of person making declaration)

declares and certifies under the penalties of perjury that:

(He) (she) is an officer, to wit: _____
(Title)

of the _____
(Name of Corporation or Company)

insured under Open Cargo Policy No. WROC ____

or*

(He) (she) is the Assured named in the Open Cargo Policy No. WROC ____ and is familiar with all matters pertaining thereto.

1. That on the ____ day of _____ 195__, the Assured first had knowledge that the amount of collateral deposited pursuant to the terms of said policy was exceeded by the amount of premium due thereunder; that the amount of collateral deposited pursuant to the terms of said policy on that date was $_____; that at the date when the collateral became exceeded by the amount of unpaid premium the collateral was for an amount of $_____, and the unpaid premium amounted to $_____.

2. That under the following circumstances the Assured became aware for the first time that said collateral was insufficient (explain in detail the manner in which the collateral became exceeded): _____

3. That to the best of the Assured's information and belief the following shipments were made after the date when the collateral first became exceeded and the Assured honestly and in good faith intended said shipments to be covered under the War Risk Open Cargo Policy No. _____.

4. This declaration is furnished by the Assured in order to comply with the provisions of Clause 21 of War Risk Open Cargo Policy and is made by the Undersigned and is furnished by the Assured with full knowledge that the Maritime Administrator will rely on the statements contained therein and is submitted for the purpose of inducing the Maritime Administrator to rely thereon.

Date: _____

_____

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

§ 308.537 *Effective date of endorsement.* Every endorsement to an Open Cargo Policy shall be made effective upon a future date to be specified in the endorsement. No endorsement may be made retroactive, unless specially authorized by the Maritime Administrator in writing. Each endorsement shall contain a provision in substantially the following form:

Effective date. This endorsement shall be effective on all shipments made on or after _____:

(a) Under ocean bills of lading dated on or after said date, or

(b) If ocean bills of lading are not issued, under equivalent shipping documents dated on or after said date, or

(c) If no ocean bills of lading or equivalent shipping documents are issued, or if such documents are undated, laden on overseas vessel on or after said date.

*Strike out inapplicable part.

III—FACULTATIVE WAR RISK CARGO INSURANCE

§ 308.538 *General.* The Maritime Administrator is prepared to provide facultative war risk insurance policies covering any cargoes described in § 308.501 which are designated by an applicant prior to the attachment of risks, if the applicant does not have an Open Cargo Policy issued by the Maritime Administrator, or if he has a shipment which is not covered by his Open Cargo Policy. However, a person with regular shipments is urged to avail himself of the advantages of the automatic coverage of an Open Cargo Policy. The Maritime Administrator reserves the right to decline to quote rates or bind insurance on shipments of cargo that could be covered by an Open Cargo Policy unless the applicant can show to the satisfaction of the Maritime Administrator that the risk is not one of a series of similar risks forming part of a continual flow of business for the applicant. The policy will be in the standard form of War Risk Facultative Cargo Policy, Form MA-316, prescribed in § 308.545. All policies will be issued by Underwriting Agents appointed by the Maritime Administrator. All Underwriting Agents will be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

§ 308.539 *Application for a facultative cargo policy*—(a) *Preliminary request.* Application for a Facultative Cargo Policy shall be made by filing a preliminary request in writing (including telegram) with an Underwriting Agent of the Maritime Administration, setting forth the following information:

(1) The name and address of the applicant;

(2) The amount of insurance requested;

(3) The commodity and quantity to be insured;

(4) The voyage to be covered;

(5) The name of the vessel upon which the cargo will be shipped, if known, the name of the steamship line, if known, and the date of shipment, if the applicant is submitting the request to bind war risk in writing; for security reasons, if the applicant is submitting the order to bind war risk insurance by telegram, neither the name of the vessel nor the name of the steamship line nor the anticipated date of sailing, should be mentioned. Mentioning such information in a telegram may result in a denial of insurance to the applicant. Any envelope transmitting a letter containing such information should be marked "confidential."

(b) *Binder.* Before the insurance can be bound, the applicant must provide the Underwriting Agent with a properly prepared binder on Form MA-315 prescribed in § 308.544. The binder must be submitted in duplicate, accompanied by check or Money Order payable to the order of the "Maritime Adm.-Commerce" for the full amount of the premium computed on the amount to be insured at the rate set by the Maritime Administrator. Any application for facultative cargo war risk insurance received by an Underwriting Agent later than 4 p. m. (Local War Time) shall be considered the next day's business.

(c) *Optional loss limits clause.* Clause 9 of the standard form of facultative cargo policy, Form MA-316, prescribed in § 308.545, limits the amount payable for loss to (1) the fair market value at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incident thereto, and war risk insurance with respect to the lost or damaged goods, or (2) if it is impossible to determine the fair market value at place and time of attachment of risk, the fair market value at the designated port of arrival on the date of the attachment of the risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods, or (3) if the goods had been purchased prior to loading, the actual amount paid or payable to the seller for the goods less all discounts, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. In lieu of these loss limits, the Assured by so specifying in his application, and the binder may have attached to the policy when issued Standard Optional Endorsement No. 1-A, Form 316, prescribed in § 308.546, which limits the amount payable for loss to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profits arising out of the insured venture.

§ 308.540 *Premiums*—(a) *Rates.* Rate Schedules for war risk facultative cargo insurance will be published by the Maritime Administrator from time to time, and may be obtained from an Underwriting Agent. All Rate Schedules are subject to change by the Maritime Administrator without notice. If no rate is published for a voyage on which war risk facultative cargo insurance is available, the Maritime Administrator will name a rate through an Underwriting Agent upon application. Whenever an applicant for war risk facultative cargo insurance receives a definite rate quotation and desires to bind insurance at the quoted rate, an order to bind the insurance in accordance with the procedure set forth in this subpart should be submitted within two business days following the day of quotation accompanied by check or Money Order payable to the order of "Maritime Adm.—Commerce" for the full amount of the premium thereon computed on the amount to be insured at the rate set by the Maritime Administrator, or the quotation will expire. Each cargo war risk insurance policy provided by the Maritime Administrator will be subject to a minimum premium of $_____.

(b) *Return premium.* Where goods are short-shipped the amount of insurance may be reduced by an amount computed by applying to the original amount of insurance the proportion which the quantity of merchandise short-shipped (i. e., bales, barrels, tons, and other designations of quantity) bears to the total quantity of merchandise originally

declared for insurance. Where more than one class of merchandise is insured under one policy (e. g., fuel, oil and gasoline) the reduced amount of insurance must be computed separately on each item. Where the amount of insurance is reduced, the Maritime Administrator will give consideration to requests for proportionate returns of premium. An application for the return of a premium must be submitted to the Underwriting Agent in quadruplicate on Form MA-317, prescribed in § 308.547.

§ 308.541 *Issuance of a facultative policy*—(a) *Binder.* The Underwriting Agent is authorized to issue a facultative policy in Form MA-316, prescribed in § 308.545, when there has been presented to him a properly prepared binder on Form MA-315, prescribed in § 308.544, together with the payment of the premium as required, and such policy shall be issued as soon as possible after the binder form has been presented to the Underwriting Agent. Prior to the issuance of the policy, the Underwriting Agent is authorized to accept the risk on behalf of the Maritime Administrator by signing the binder. The Maritime Administrator will provide each Underwriting Agent with a supply of facultative policies which shall not be valid until countersigned by the Underwriting Agent. The Underwriting Agent shall keep a permanent record of all such policies and the Assured to whom the policy is issued.

(b) *Numbering.* Each Facultative Cargo Policy supplied to the Underwriting Agent by the Maritime Administrator shall be numbered by the Maritime Administration before it is supplied to the Underwriting Agent. No two numbers shall be the same. The Underwriting Agent when issuing the policy shall add at the end of the Policy number the agency number assigned to that Underwriting Agent, and where policies are issued by more than one office of an Underwriting Agent the issuing office shall also be identified in the policy number. For example, the policies issued by an office in New York will be designated "NY" and policies issued in San Francisco will be designated by "SF" prefixed to the Underwriting Agent's agency number.

§ 308.542 *Warranty re thirty-day shipments.* If, after an effective binding of war risk insurance on a shipment of cargo, the assured believes that it will be impossible to comply with the warranty requiring the goods to be shipped and in transit within thirty days from the effective date of binding, such an assured may apply to the Maritime Administrator, through the Underwriting Agent, to modify the warranty. If the Maritime Administrator is satisfied that an extension of time within which the goods are warranted to be shipped and in transit should be granted, he will do so, but additional premium may be charged in the discretion of the Maritime Administrator.

§ 308.543 *Cancellation.* Facultative war risk insurance is not subject to cancellation by the Assured unless the goods are not shipped within thirty days following the effective date of binding, and then only if the policy is returned for cancellation.

§ 308.544 *Facultative binder, Form MA-315.* The following is the standard form of War Risk Facultative Cargo Binder, which must be filled in by the applicant and submitted, in duplicate, to an Underwriting Agent before the insurance can be bound:

Form MA-315 (7-54)

United States of America

Department of Commerce

Maritime Administration

War Risk Facultative Cargo Binder No. WRFC ____

Amount Insured _____. Date _____.
Rate _____%.
Premium $_____.

In consideration of a premium as above, the United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, insures, in accordance with applicable provisions of law, and the terms and provisions of the standard form of War Risk Facultative Cargo Policy, Form MA-316, prescribed in section 308.545 of Maritime Administration General Order 75, published in the FEDERAL REGISTER on _____, 195__, (__ F. R. __): _____
(Assured)

_____
Upon lawful goods or merchandise consisting of _____ which come within one or more of the following categories, as required by section 1203 (b) of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "Act"):

(a) Shipped or to be shipped on any American vessel as defined in section 1201 (a) of the act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the National defense or the national economy of the United States, when so engaged;

In the sum of _____ Dollars. Per the vessel called the _____
(If vessel not known, specify steamship line, if known) _____. Voyage from port of _____ to port of _____.
Warranted goods shipped and in transit on or before thirty (30) days from effective date of the binding of this risk.

Standard Optional Endorsement No. 1-A (is) (is not) desired.

Any loss payable hereunder shall be payable in funds current in the United States to the order of the Assured upon surrender of this Binder and Policy (if issued) thirty (30) days after full proofs of loss and proofs of interest have been filed with the Underwriting Agent of the Maritime Administrator, acting for the Secretary of Commerce, by whom this binder was issued.

It is (known) (anticipated) that the goods described herein (have been) (will be) shipped from _____ on _____.

(For Marks, Numbers, other Identification and Special Conditions.)

_____
(Assured)

By: _____

Receipt of $_____ covering insurance premium under above binder is hereby acknowledged:

Accepted on behalf of the Maritime Administrator, acting for the Secretary of Commerce of the United States of America.

_____
(Underwriting Agent)

By: _____

Underwriting Agent's Agency Number _____.

The Underwriting Agent does not, by signing this binder or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this binder, but acts solely under the power conveyed to the Underwriting Agent by an agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

NOTE: Binder forms must be printed, typewritten, or mimeographed and submitted in duplicate to the Underwriting Agent, who will retain one copy.

§ 308.545 *Faculative cargo policy, Form MA-316.* The following is the standard form of War Risk Facultative Cargo Policy:

Form MA-316 (7-54)

United States of America

Department of Commerce

Maritime Administration

War Risk Facultative Cargo Policy No. WRFC ____

Amount insured $_____. Date _____.
Rate _____%.
Premium $_____.

CLAUSE 1. *Assured.* The United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce (herein called the "Underwriter"), in consideration of the premiums as shown above, and in accordance with applicable provisions of law and subject to all limitations thereof, particularly title XII, Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "Act"), hereby insures _____ (herein called the "Assured") against WAR RISKS ONLY, in accordance with the terms and conditions hereinafter set forth. This policy is issued on behalf of the Underwriter by _____ (herein called the "Underwriting Agent").

CLAUSE 2. *Loss payable.* Loss, if any, payable, in funds current in the United States of America, to the order of the Assured upon surrender of this Policy, thirty days after satisfactory proofs of loss and proofs of interest have been filed with the Underwriting Agent.

CLAUSE 3. *Goods insured.* To attach, as provided in Clauses 5 and 13, upon lawful goods or merchandise consisting of _____ which come within one or more of the following categories, as required by section 1203 (b) of the Act:

(a) Shipped or to be shipped on any American vessel, as defined in section 1201 (a) of the Act;

(b) Shipped or to be shipped on any foreign flag vessel owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories or possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation of waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

CLAUSE 4. *Insurable interest.* To cover shipments:

(a) *By assured.* Shipped or consigned to, or by, the Assured for his account and risk;

(b) *By others for Assured.* Shipped or consigned to, or by, other persons for the account and at the risk of the Assured;

(c) *Sold prior to loading.* Shipped to, by, or at the direction of the Assured and sold by him prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel;

(d) *Sold after attachment of risk.* Shipped to, by, or at the direction of the Assured and sold by the Assured subsequent to the attachment of risk hereunder on terms requiring the Assured to provide war risk insurance to the port of discharge, subject to the condition that in the event of loss the amount collectible shall not exceed the amount which would have been collectible by the Assured if the Assured at the time of loss had retained full interest in the insured goods.

CLAUSE 5. *Attachment.* To attach, as provided in Clause 13, on shipments made on or before _____, and warranted that goods will be shipped and in transit on or before said date. Warranted that the goods insured hereunder have not become waterborne on overseas vessel prior to the date of this insurance, or if waterborne are in good safety in port at day and hour of attachment of risk. Any shipment of cargo excluded from coverage by application of this warranty will automatically attach hereunder as of the time of the arrival of the vessel and interest insured at the next intermediate port in good safety.

CLAUSE 6. *Conveyance.* By overseas vessels and connecting conveyances.

CLAUSE 7. *Voyage covered.* At and from _____ to _____.

CLAUSE 8. *Valuation.* Goods insured hereunder shall be valued at _____.

CLAUSE 9. *Limits on amount payable for loss*—(a) *Fair market value at commencement of risk.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value of the lost or damaged goods at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(b) *Fair market value at port of arrival.* If it is impossible to determine the fair market value at the place and approximate time of the attachment of risk, as provided in paragraph (a) of this clause, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the fair market value at the designated port of arrival on the date of the attachment of risk, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods.

(c) *Purchase price less discount.* If the lost or damaged goods were purchased by the named Assured prior to loading on board the overseas vessel, the Assured shall file a declaration (under the penalties of perjury), in lieu of the declarations provided for in paragraphs (a) and (b) of this clause, stating that the amount claimed does not exceed the actual amount paid or payable to the seller for the goods less all discounts, and plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. If the lost or damaged goods were purchased by a principal for whom the Assured is Agent, the declaration provided for in this paragraph shall be signed by both the agent and the principal.

(d) *Sales price less discounts.* If the lost or damaged goods were shipped by, to, or at the direction of the Assured and were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury) in lieu of the declaration required by paragraphs (a), (b) or (c) of this clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods if such items are not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(e) *Criminal Code.* The declaration required to be filed pursuant to this clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

AMERICAN INSTITUTE WAR CLAUSES

CLAUSE 10. *War risks only.* This insurance is only against the risks of capture, seizure, destruction or damage by men-of-war, piracy, takings at sea, arrests, restraints, detainments and other war-like operations and acts of kings, princes and peoples in prosecution of hostilities or in the application of sanctions under international agreements, whether before or after declaration of war and whether by a belligerent or otherwise, including factions engaged in civil war, revolution, rebellion or insurrection, or civil strife arising therefrom, and including the risks of aerial bombardment, floating or stationary mines and stray or derelict torpedoes and weapons of war employing atomic fission or radioactive force, but excluding claims for delay, deterioration and/or loss of market, and warranted not to abandon (on any ground other than physical damage to ship or cargo) until after condemnation of the property insured.

CLAUSE 11. *Arrests, restraints.* Warranted free from any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests, restraints or detainments.

CLAUSE 12. *Commandeering.* This insurance does not cover any loss or damage caused by or resulting from any of the following causes:

(a) Commandeering, preemption, requisition or nationalization by government (de facto or otherwise) of the country to or from which the goods are insured.

(b) Seizure or destruction under quarantine or customs regulations.

CLAUSE 13. *Period covered.* (a) The insurance against the risks enumerated in Clause 10, except the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, referred to in Clause 13 (b) below, shall not attach to the interest hereby insured or to any part thereof—

(1) Prior to being on board an overseas Vessel (for the purpose of this Clause 13 an overseas Vessel shall be deemed to mean a Vessel carrying the interest from one port or place to another where such voyage involves a sea passage by that Vessel);

(2) After being discharged overside from an overseas vessel at the final port of discharge,

or

after the expiry of fifteen (15) days counting from midnight of the day of arrival of the overseas vessel at the final port of discharge whichever shall first occur;

(3) After expiry of fifteen (15) days from midnight of the day of arrival of the overseas vessel at an intermediate port or place to discharge the interest for on-carriage from that or any other port or place by another overseas vessel, but shall re-attach as the interest is loaded on the on-carrying overseas vessel. During the said period of fifteen (15) days the insurance remains in force whether the interest is awaiting transit or in transit between the overseas vessels.

(b) The insurance against the risks of floating or stationary mines and stray or derelict torpedoes, floating or submerged, attaches as the interest hereby insured is first loaded on lighter, craft or vessel after leaving the warehouse at point of shipment in transit for the destination declared hereunder, and ceases to attach as the interest is finally landed from the vessel, craft or lighter prior to delivery to warehouse at such destination.

If the contract of affreightment is terminated at a port or place other than the destination named therein such port or place shall be deemed the final port of discharge for the purpose of this Clause.

It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control.

If anything contained in this policy shall be inconsistent with this Clause 13 it shall to the extent of such inconsistency be null and void.

CLAUSE 14. *Deviation.* This insurance shall not be vitiated by deviation, overcarriage, change of voyage, or by any error or unintentional omission in the description

of interest, vessel or voyage, provided the same be communicated to the Underwriting Agent as soon as known to the Assured and an additional premium paid if required.

CLAUSE 15. *Sue and labor.* In case of any loss or misfortune, it shall be lawful and necessary to and for the Assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or the Underwriter, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; and to the charges whereof, the Underwriter will contribute according to the rate and quantity of the sum hereby insured.

CLAUSE 16. *General average.* General Average and Salvage Charges payable according to United States laws and usage and/or as per Foreign Statement and/or as per York-Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

CLAUSE 17. *Collision.* No claim shall be payable hereunder which arises from collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this paragraph "power" includes any authority maintaining naval, military or air forces in association with a power.

SPECIAL CLAUSES

CLAUSE 18. *Transit interrupted.* If the ordinary course of transit of the goods hereby insured is interrupted or terminated by the shipper, consignees, or Assured or any party acting on their behalf, this insurance shall forthwith terminate unless otherwise specially agreed by the Maritime Administrator.

CLAUSE 19. *Unintentional error.* This insurance shall not be invalidated by any error, or omission which is demonstrated to the satisfaction of the Maritime Administrator to have been inadvertent or unintentional. The Maritime Administrator or his representative duly authorized in writing, may waive strict compliance with any warranty or condition of this insurance to the extent that he may determine that it imposes a hardship on any claimant in good faith hereunder which would not be imposed in connection with a policy issued in accordance with commercial practice in the marine insurance business, and to the extent that he may determine that such waiver is not contrary to the provisions of title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress, under which the Policy is issued. In any determination as aforesaid the decision of the Maritime Administrator, or his duly authorized representative, shall be conclusive upon all parties thereto.

CLAUSE 20. *Goods excluded.* This policy does not cover shipments of specie, currency, securities, valuable documents, jewelry, precious stones, gold and silver and other precious metals, nor any articles transported by means of ordinary mail or air-mail or registered mail or parcel post.

CLAUSE 21. *Return premium.* No premium will in any case be returned to the Assured except in the event of an error made in the application of a rate or in the computation of a premium, or except in the event the insured goods are not shipped or are short-shipped; notwithstanding the foregoing, whenever goods have been over-insured by reason of an error or otherwise, and such fact is discovered and the material facts and circumstances are presented immediately after discovery of the over-insurance and prior to the time when the overseas vessel reaches the destination port in safety, to the Underwriting Agent, then the Maritime Administrator will give consideration to an application for a return premium and if in his sole discretion the Maritime Administrator is satisfied that the Assured acted in good faith and that the instance is one in which in commercial practice a return premium would be made the Maritime Administrator will grant the appropriate return premium.

CLAUSE 22. *Partial loss.* In case of partial loss by perils insured against, the proportion of loss shall be determined by a separation of the damaged portion of the insured property from the sound and by an agreed estimate (by survey) of the percentage of damage of such portion: or if such agreement is not practicable, then by public sale of such damaged portion for the account of the owner of the property, and by comparison of the amount so realized with the applicable valuation limit provided in Clause 9.

CLAUSE 23. *Labels clause.* In case of damage affecting labels, capsules or wrappers, the Underwriter, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods, but in no event shall the Underwriter be liable for more than the insured value of the damaged merchandise.

CLAUSE 24. *Carrier clause.* Warranted that this insurance shall not inure, directly or indirectly, to the benefit of any carrier or bailee.

CLAUSE 25. *Notice of loss.* In the event of loss which may give rise to a claim under the policy, prompt notice must be given to the Underwriting Agent.

CLAUSE 26. *Rules and regulations.* This policy is subject to all rules and regulations pertaining hereto which may now or hereafter from time to time be published in the FEDERAL REGISTER.

CLAUSE 27. *Cancellation.* This policy may not be cancelled by the Assured unless the goods are not shipped within thirty (30) days following the effective date of binding and then only if the policy is returned to the Underwriting Agent for cancellation.

CLAUSE 28. *Amendments.* This policy may be amended by the binder or by endorsement attached hereto and executed on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, by a duly authorized Underwriting Agent pursuant to prior written or telegraphic instructions from the Maritime Administrator.

In witness whereof, the Maritime Administrator, acting for the Secretary of Commerce, has signed this policy, but this policy shall not be valid unless countersigned by an authorized Underwriting Agent.

UNITED STATES OF AMERICA,
By: Maritime Administrator,
Acting for the Secretary
of Commerce.

(Maritime Administrator)

The Underwriting Agent does not, by countersigning and issuing this Policy or in any other manner, warrant its own authority, or the authority of the Maritime Administrator, acting for the Secretary of Commerce, to issue this Policy, but acts solely under the power conveyed to the Underwriting Agent by an Agreement made with the Maritime Administrator, acting for the Secretary of Commerce.

Countersigned this ____ day of _____ 195__. _____. Address for
(Underwriting agent)
Underwriting Agent for receiving notices of loss.

By: _____
_____

Original and duplicate issued—one of which being accomplished, the other to stand null and void.

§ 308.546 *Standard optional endorsement No. 1–A, Form MA–316–A.* Standard Optional Endorsement No. 1–A limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. (Similar provisions for Open Cargo Policies are contained in Standard Optional Endorsement No. 1, Form MA–300–A, prescribed in § 308.518.) Application for Standard Optional Endorsement No. 1–A must be made to the Underwriting Agent at the time application is made for the policy. The Underwriting Agent is authorized to issue the endorsement without prior approval of the Maritime Administrator. The following is the Standard Form of Optional Endorsement No. 1–A:

Form MA–316–A (7–54)

United States of America

Department of Commerce

Maritime Administration

Standard Optional Endorsement No. 1–A

This endorsement is attached to and made a part of War Risk Facultative Cargo Policy No. WRFC ____, issued to _____. The terms and conditions as set forth below shall supersede and nullify the clauses of the policy insofar as such clauses are inconsistent with the clauses set forth below:

CLAUSE A. *Limits on amount payable for loss.* Clause 9 of the Facultative Cargo Policy is hereby deleted and the following substituted therefor:

CLAUSE 9. *Limits on amount payable for loss*—(a) *Actual pecuniary loss.* In the event of loss, the Assured shall file a declaration (under the penalties of perjury) stating that the amount claimed does not exceed the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. If claim is filed by the Assured named herein on behalf of any other person at interest, the declaration shall include a statement that the amount collectible does not exceed the amount which would have been collectible by the Assured named herein if at the time of the loss the Assured named herein had full interest in the insured goods. If this policy is issued to an agent for account of a principal named herein, both the agent and the named principal shall be required to sign the declaration.

(b) *Sales price less discount.* In the event of the loss of goods shipped by, to, or at the direction of the Assured and which were sold by the Assured prior to loading on board the overseas vessel (1) on terms requiring the Assured to provide war risk insurance to the port of discharge, or (2) with respect to which written or cabled instructions to provide war risk insurance to the port of discharge have been received by the Assured from the purchaser prior to loading of the goods on board the overseas vessel, and which were shipped for the account and at the risk of third persons other than a branch, subsidiary or affiliate of the Assured, the named Assured shall file a declaration (under the penalties of perjury), in lieu of the declaration, required by paragraph (a) of this Clause, stating that the amount claimed does not exceed the actual bona fide sales price less all discounts, plus the costs of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost goods if such items are

not included in the sales price. The claim shall be filed by the named Assured unless otherwise permitted in writing by the Maritime Administrator for good cause shown.

(c) *Criminal code.* The declarations required to be filed pursuant to this Clause shall be subject to the United States Criminal Code which makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

§ 308.547 *Application for return premium, Form MA-317.* An application for the return of premium must be filed in duplicate with the Underwriting Agent in the following form:

Form MA-317 (7-54)

United States of America

Department of Commerce

Maritime Administration

Application for Return Premium Facultative Cargo Policy

Do not fill out this space

Premium paid _____
Checked by Underwriting Agency _____
Checked by Clearing Organization _____
Approved by:
_____
Maritime Administrator, Acting for the Secretary of Commerce of the United States of America

Assured _____ Policy Number _____
Address _____
Underwriting Agent _____
Date of Payment _____
Nature of cargo _____
Date Insurance Bound _____

INSURANCE DECLARED

Quantity (tons, barrels, bales, etc.)	Amount of insurance	Rate	Premium
Total			

INSURANCE AT RISK

Total			

Return Premium _____

Remarks: _____

Application is hereby made for return premium as set forth above.

Date: _____

_____
(Assured)

By: _____
_____
(Title)

Certificate

_____
(Name of person certifying)

certifies under penalties of perjury that:

(He) (She) is an officer, to wit: _____
(Title)

of the _____, insured
(Name of Corporation or Company)

under Facultative Cargo Policy No. _____

or*

(He) (She) is the Assured named in Facultative Cargo Policy No. _____ and is familiar with all matters pertaining thereto; and that the information set forth in said application is in all respects true and correct and is made to induce the Maritime Administrator to return part or all of the premiums heretofore paid by said Assured to said Maritime Administrator for Facultative Cargo War Risk Insurance. The application is made with full knowledge that the Maritime Administrator will rely on the information set forth therein.

_____

NOTE: The United States Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U. S. C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U. S. C. 287).

Policy hereby endorsed in accordance with foregoing and voucher cleared by Maritime Administration.

Date: _____.

Maritime Administrator, Acting for the Secretary of Commerce.

By: _____
(Underwriting Agent)

By: _____

*Strike out inapplicable part.

IV—GENERAL

§ 308.548 *Standard form of underwriting agency agreement for cargo; Form MA-318.* The following is the standard form of underwriting agency agreement which will be executed by the Maritime Administrator and domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies as Underwriting Agents to issue war risk cargo policies in accordance with the provision of the agreement and this subpart:

Form MA-318 (7-54)

United States of America

Department of Commerce

Maritime Administration

Underwriting Agency Agreement for Cargo

This Agreement, made and entered into this ____ day of _____, 195__, by and between the United States of America (herein called the "United States"), acting by the Secretary of Commerce (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and _____ a corporation organized and existing under the laws of _____ and duly authorized to do a marine insurance business in a State of the United States, having an office for the transaction of business at _____ (herein called the "Underwriting Agent").

Witnesseth:

Whereas, pursuant to title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "Act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his Underwriting Agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by title XII of the Act, except the authority "to find that insurance adequate to the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" which was reserved to the Secretary. (Section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (Amended), published as section 5 (a) (2) (iii) in the FEDERAL REGISTER September 15, 1953, 18 F. R. 5518, 5519); and

Whereas, the Administrator has determined to employ the Underwriting Agent as an underwriting agent in providing war risk cargo insurance as set forth in section 1203 (b) of the Act upon the terms and conditions herein set forth:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions herein set forth, the parties hereto agree as follows:

1. *Appointment of agent.* The Administrator hereby authorizes the Underwriting Agent, as an agent acting on behalf of the Administrator and not as an independent contractor, to utilize its offices and facilities to make available the insurance which the Secretary is authorized to provide pursuant to Section 1203 (b) of the Act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time to the Underwriting Agent by the Administrator directly or through any clearing agency appointed by the Administrator. The Underwriting Agent hereby agrees to utilize its offices and facilities to make such insurance available, as agent for the Administrator, and to perform the functions hereinafter provided for to the best of its ability. The Underwriting Agent may act through its home office, branch offices or agencies which are authorized to write insurance on its behalf.

2. *Duties of agent.* The duties of the Underwriting Agent shall be as follows:

(a) *Receive applications and issue binders and policies.* The Underwriting Agent shall receive applications for insurance, covering the class or classes of property and subject to the rates and conditions specified by the Administrator upon forms prescribed by the Administrator. After determining that the applications have been submitted in complete and proper form and are accompanied by remittances in the amount of the premiums required for the insurance applied for, the Underwriting Agent shall countersign binders or policies of insurance, or both binders and policies of insurance, subject to the rules, rates, terms and conditions specified by the Administrator on forms prescribed by the Administrator. The insurer under such policies shall be the United States.

(b) *Keep records.* The Underwriting Agent shall keep a full and complete record of all applications, binders, and policies, and shall also record all premiums, charges, collateral deposit funds and surety bonds required by the terms of the binders and policies, so that a record may be available at all times to the Administrator, both as to all applications received and all binders and policies isued, and as to all collateral deposit funds or surety bonds provided by the assured in connection with such binders and policies.

(c) *Receive money and reports.* The Underwriting Agent shall accept monthly Closing Reports from each open cargo policyholder for transmission to the Administrator or to a clearing agency if one is designated by the Administrator. The Underwriting Agent shall also receive checks drawn to the order of "Maritime Adm.—Commerce" for the premiums and charges involved, which checks shall be deposited by the Underwriting Agent in the Federal Reserve Bank nearest to its office, or in such other bank as may be authorized by the Administrator to receive such deposits. The Underwriting Agent shall receive from the bank in which the deposits are made receipts therefor in such number as may be prescribed in instructions to the Underwriting Agent and handle the receipts so received in accordance with such instructions.

(d) *Report monthly.* The Underwriting Agent shall prepare a monthly report, in summary form, of all Closing Reports and binders and policies issued on standard forms to be approved by the Administrator and transmit them, together with supporting Closing Reports received from Open Cargo policyholders and receipts for deposits made as above provided, to the Administrator or to a clearing agency if one is designated by the Administrator.

(e) *Other reports.* The Underwriting Agent shall prepare and transmit such other reports as may be required by the Administrator.

(f) *Process claims for return premiums.* The Underwriting Agent shall receive from holders of policies issued by such Underwriting Agent any claims for return premiums on a standard form prescribed by the Administrator and shall certify thereon, if such is the fact, that the amounts with respect to which such return is claimed were previously paid and were included in closing reports submitted to the Administrator and that based upon the statements included in such application by the assured the return premium applied for is payable in accordance with the regulations of the Administrator. Such applications and certifications shall be transmitted promptly to the Administrator or to a clearing agency if one is designated by the Administrator.

(g) *Process claims for losses.* The Underwriting Agent shall receive reports of losses, prepare adjustments and vouchers, and other data, required by the Administrator, and submit the same with its recommendation as to whether claims are in order for settlement to the Administrator or to a clearing agency if one is designated by the Administrator.

(h) *Help establish advisory committee.* The Underwriting Agent shall, if requested by the Administrator, cooperate with the Administrator and other Underwriting Agents acting in a similar capacity to establish and maintain an advisory underwriting committee to consult with and advise the Administrator in connection with specific underwriting problems, subject to the rules, regulations and instructions of the Administrator, and to establish and maintain such other advisory committees as may be deemed necessary from time to time to safeguard the interests of the Administrator including a loss committee to act as a recipient for information concerning losses and to pass upon any recommendations made by the Underwriting Agent as to losses and payments of claims arising therefrom.

(i) *Cooperate with clearing agency.* The Underwriting Agent shall if requested by the Administrator cooperate with any clearing agency designated by the Administrator to act on behalf of the Administrator in coordinating and facilitating the issuance of insurance pursuant to Section 1203 (b) of the Act in accordance with terms and conditions agreed upon between the clearing agency and the Administrator and in accordance with the rules, regulations and instructions issued by the Administrator to the clearing agency.

3. *Compensation.* Subject to paragraph 9 of this Agreement:

(a) *Fair and reasonable.* The Underwriting Agent shall receive for its services such amount as the Administrator and the Underwriting Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Underwriting Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Underwriting Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator, provided, however, that all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by Section 1209 (d) of the Act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly.* A statement of the compensation due to the Underwriting Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Underwriting Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Underwriting Agent.

4. *Standard of performance.* In the discharge of its duties and obligations pursuant to this Agreement, the Underwriting Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Underwriting Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Underwriting Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Underwriting Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Underwriting Agent shall be deemed to include a determination by the Underwriting Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Underwriting Agent.

5. *Writing insurance for own account.* It is understood that the Underwriting Agent is or may be engaged in writing for its own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by it hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Underwriting Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. *Books and records.*

(a) *Maintained subject to audit.* The Underwriting Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Underwriting Agent, in accordance with regulations made from time to time by the Administrator, and shall at all time be subject to audit and inspection by the Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Underwriting Agent in the performance of and involving transactions related to this Agreement.

7. *Acts only as agent.* The Underwriting Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Underwriting Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement, directly or through any clearing agency appointed by the Administrator. The Underwriting Agent may accompany its signature in all policies countersigned by it hereunder with a statement that, in countersigning such policies, it acts solely under the powers conveyed to it by the Administrator and that it does not thereby warrant its authority to accept applications for insurance or its authority to countersign, nor the authority of the Administrator to issue such policies.

8. *Special circumstances.*

(a) *Reimbursement of taxes and fees.* In the event that the Underwriting Agent, after giving notice to the Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any state of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting incomes taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Underwriting Agent hereunder, the Administrator shall reimburse the Underwriting Agent therefor and for any special expenses necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Underwriting Agent on account of anything done or not done, by the Underwriting Agent, the Administrator or any clearing agency appointed by him, in connection with the issuance or non-issuance of insurance on behalf of the Administrator or the payment or non-payment of claims arising thereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations, or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Underwriting Agent be compelled or required to make any payment or incur any expense, the Administrator shall reimburse the Underwriting Agent for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Underwriting Agent shall have complied with the standard of performance required hereunder. In any of the foregoing cases, the Underwriting Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as and when the Secretary finds that war risk cargo insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. The Underwriting Agent shall not be entitled to receive any compensation or to be reimbursed for any expenditures, as otherwise authorized by paragraph 3 of this Agreement, for services rendered or expenditures incurred prior to the effective date of this Agreement. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Underwriting Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Underwriting Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Underwriting Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member delegate.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
Secretary of Commerce
By: Maritime Administrator

Maritime Administrator

Attest:

Underwriting Agent
By: ---

Attest:

Approved as to form:

Assistant General Counsel
Maritime Administration

I, ---, certify that I am the duly chosen, qualified, and acting Secretary of ---, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that ---, who signed this Agreement on behalf of said corporation, was then the duly qualified --- of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation.

[CORPORATE SEAL]

(Where special action of the governing body is not immediately practicable, the following must be signed by the United States Manager, or by the Branch Manager or other similar executive who executes the Agreement.)

I, ---, certify that I am the --- of --- the party to this Agreement referred to therein as the Underwriting Agent; that I personally signed this Agreement on behalf of said corporation, under powers given to me by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation.

--- L. S.

§ 308.549 *Application for appointment of Cargo Underwriting Agent, Form MA-319.* Any domestic insurance company authorized to do a marine insurance business in any State of the United States may apply for appointment as a Cargo Underwriting Agent by sending a letter in the following form to the Maritime Administrator:

Form MA-319 (7-54)

Application for Appointment of Cargo Underwriting Agent

MARITIME ADMINISTRATOR,
Washington 25, D. C.

DEAR SIR:

The undersigned, an insurance company duly admitted to transact the business of marine insurance in the following State or States of the United States, hereby applies for appointment as Underwriting Agent of the Maritime Administrator, to execute and issue binders and open and facultative war risk cargo insurance policies on behalf of the United States of America, represented by the Maritime Administrator, acting for the Secretary of Commerce, and to perform other functions and duties, as are more specifically set forth in the standard form of underwriting agency agreement prescribed by the Maritime Administrator and printed in the FEDERAL REGISTER of the United States on the ---. In connection with this application, we are transmitting herewith three executed counterparts of an underwriting agency agreement in such standard form.

Dated: ---

(Applicant)

§ 308.550 *Certificate, Form MA-320*—(a) *When used.* Wherever any provision of this subpart or any amendment thereto, requires the Assured to make a declaration or certification under the penalties of perjury and the form of the declaration or certificate is not prescribed, the Assured may execute a certificate on Form MA-320-A, prescribed in paragraph (b) of this section if the Assured is an individual, or on Form MA-320-B, prescribed in paragraph (c) of this section if the Assured is a partnership, or on Form MA-320-C, prescribed in paragraph (d) of this section if the Assured is a corporation.

(b) *Individual, Form MA-320-A.* If the Assured is an individual, a certificate in the following form may be used:

Form MA-320-A (7-54)

Certificate

I, individually, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying schedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete, and are made in good faith for the purpose of inducing the United States of America acting by and through the Maritime Administrator to rely thereon.

(Assured)

(c) *Partnership, Form MA-320-B.* If the Assured is a partnership, a certificate in the following form may be used:

Form MA-320-B (7-54)

Certificate

I, individually, and on behalf of the named policyholder, a partnership for whom I declare I have the power to make this certificate, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying sechedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete, and are made in good faith for the purpose of inducing the United States of America acting by and through the Maritime Administrator to rely thereon.

(Title)

(d) *Corporation, Form MA-320-C.* If the Assured is a corporation, a certificate in the following form may be used:

Form MA-320-C (7-54)

Certificate

I, individually, and on behalf of the named policyholder, a corporation, for whom I declare I have the power to make this certificate, under the penalties provided by the Criminal Code of the United States, Title 18, U. S. C., Sections 287 and 1001, certify that the statements hereinabove contained and in any accompanying schedules or reports, have been examined by me and to the best of my knowledge and belief they are true, correct and complete, and are made in good faith for the purpose of inducing the United States of America, acting by and through the Maritime Administrator, to rely thereon.

(Title)

§ 308.551 *War Risk insurance clearing agency agreement for cargo.* The following is the standard form of clearing agency agreement which will be executed by the Maritime Administrator and domestic insurance companies, or groups of domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies or groups of companies as clearing agents:

Form MA-321 (3-56)

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

MARITIME ADMINISTRATION

CLEARING AGENCY AGREEMENT FOR CARGO

This Agreement, made and entered into this --- day of 195---, by and between the United States of America (herein called the "United States"), acting by the Secretary of Commerce (herein called the "Secretary"), represented by the Maritime Administrator (herein called the "Administrator"), and ---, (herein

called the "Clearing Agent"), having an office for the transaction of business at ----------, ----------, an association of domestic insurance companies (herein called the "Participating Members"), each of which is authorized to do a marine insurance business in a State of the United States.

WITNESSETH

Whereas, pursuant to title XII of the Merchant Marine Act, 1936, as amended, Public Law 763—81st Congress (herein called the "Act"), the Secretary is authorized under certain circumstances to provide marine insurance and reinsurance against loss or damage by the risks of war, and to employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States to act as his underwriting agent; and

Whereas, the Secretary has delegated authority to the Administrator to perform the functions vested in the Secretary by title XII of the act, except the authority "to find that insurance adequate to the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" which was reserved to the Secretary. Section 6.01, subsection 2, paragraph (3) of Department Order No. 117 (amended), published as section 5 (a) (2) (iii) in the FEDERAL REGISTER September 15, 1953, 18 F. R. 5518, 5519; and

Whereas, the Administrator is prepared, under the authority of section 1209 (d) of the act, to enter into Underwriting Agency Agreements with each of the Participating Members and with other Domestic Companies authorized to do an insurance business in any State of the United States and having facilities similar to the Participating Members (hereinafter collectively called the "Underwriting Agents"), for the purpose of performing certain functions on behalf of the Administrator, including the receipt of applications and countersignature of policies, in connection with the issuance of insurance pursuant to section 1203 (b) of the act; and

Whereas, the Administrator has determined to utilize the services and facilities of ----------, to act as clearing agent to coordinate the issuance of cargo war risk insurance and facilitate the administration of the cargo war risk program by the Administrator;

Now, therefore, in consideration of the premises and of the mutual covenants and agreements, and upon the terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. *Appointment of Agent.* The Administrator hereby authorizes the Clearing Agent, as an agent acting on behalf of the Administrator and not as an independent-contractor, to utilize its offices and facilities in cooperation with the Underwriting Agents for the purpose of coordinating and facilitating the issuance of cargo war risk insurance pursuant to section 1203 (b) of the act and to perform the functions hereinafter provided for, upon the terms and conditions hereinafter set forth and in accordance with the rules, regulations and instructions which will be issued from time to time by the Administrator to the Clearing Agent. The Clearing Agent hereby agrees to utilize its offices and facilities and to perform the functions hereinafter provided for to the best of its ability on behalf of the Administrator. The Clearing Agent may act through and use the facilities of the ---------- and such other agents as may be approved by the Administrator, to the extent it deems necessary in the performance of its duties hereunder.

2. *Duties of Agent.* The duties of the Clearing Agent shall be as follows:

(a) The Clearing Agent, when and as instructed by the Administrator, shall promptly transmit to the Underwriting Agents all applicable rules, regulations, instructions and information which it receives from the Administrator in connection with the program of insurance authorized by section 1203 (b) of the act. The Clearing Agent shall promptly transmit to the Administrator any notice, demand, request or report submitted to it by the Underwriting Agents for transmission to the Administrator, in accordance with this Agreement and the Underwriting Agency Agreements.

(b) The Clearing Agent, when and as required by the Administrator, shall receive reports from the Underwriting Agents, setting forth in summary form, all applications received, policies issued, invalidated, cancelled, reduced or extended, premiums collected and returned and such other information as the Administrator may from time to time request. The Clearing Agent shall prepare and submit to the Administrator, at such regular intervals as the Administrator may direct, a report on a form approved by the Administrator, combining and summarizing the information which shall have been reported to it by the Underwriting Agents as aforesaid and including such other information as may be reasonably required by the Administrator. The Clearing Agent shall from time to time prepare and submit to the Administrator such other reports and information relating to its activities hereunder as the Administrator may from time to time reasonably request.

(c) The Clearing Agent shall receive from the Underwriting Agents reports and claims of losses submitted to said Agents together with the pertinent documents and recommendations relating thereto which the Underwriting Agents shall have prepared and assembled. The Clearing Agent shall promptly transmit all such reports, documents and recommendations to the Administrator, together with any additional information relating to such claims which the Administrator may reasonably require in determining their eligibility for settlement and payment.

(d) The Clearing Agent shall receive from the Underwriting Agents claims submitted to said Agents for return of all or part of premiums previously collected under policies, if any, providing for return premiums, together with the required certifications of said Agents in connection with such claims. The Clearing Agent shall promptly transmit said claims and certifications to the Administrator, together with any further information which the Administrator may reasonably require in connection therewith.

(e) The Clearing Agent shall maintain a complete, separate system of books of records and accounts covering its operations and activities under this Agreement, including a record of all statements, vouchers and other information received by it from the Underwriting Agents. These books of records and accounts shall be the property of the Administrator. They shall be kept available by the Clearing Agent at all times for audit and inspection by duly authorized representatives of the Administrator and by the Comptroller General of the United States or their duly authorized representatives during the period of this Agreement and up to thirty-six (36) months after its termination and thereafter until final settlement of any outstanding claims against the Administrator by holders of policies issued by the Underwriting Agents.

(f) The Clearing Agent shall receive such periodic statements and vouchers of compensation and other payments claimed by the Underwriting Agents as the Underwriting Agents may be required to submit pursuant to the Underwriting Agency Agreements. The Clearing Agent shall consolidate such statements and vouchers into a single monthly statement of compensation claimed by the Underwriting Agents as of the last day of the month covered by such consolidated statement and shall certify thereon that the amounts set forth therein truly and correctly reflect the statements and vouchers received from the Underwriting Agents. The Clearing Agent shall then submit such consolidated statement to the Administrator, who upon his approval thereof, shall promptly forward to the Clearing Agent his check payable to the order of the Clearing Agent in the total amount of such statement as approved by the Administrator. The Clearing Agent shall thereupon make payments to the order of the individual Underwriting Agents in the respective amounts set forth in the statement as approved by the Administrator.

3. *Compensation*—(a) *Fair and reasonable.* The Clearing Agent shall receive for its services such amount as the Administrator and the Clearing Agent may, from time to time, agree to be fair and reasonable compensation. In addition to such fair and reasonable compensation, the Clearing Agent shall receive reimbursement for out-of-pocket expenditures reasonably incurred, meaning payments to persons not regularly employed by the Clearing Agent but excluding payments to attorneys unless such employment has been authorized by the Administrator, provided, however, that all such expenditures shall be subject to the review of the Administrator, and further provided that, except as authorized by section 1209 (d) of the act, such expenditures shall not include any fee or other consideration paid to an insurance broker or any person acting in a similar intermediary capacity for services by virtue of his participation in arranging any of such insurance nor include any payment on account of solicitation for or stimulation of such insurance.

(b) *Paid monthly.* A statement of the compensation due to the Clearing Agent (including reimbursement for out-of-pocket expenses as herein provided) shall be submitted by the Clearing Agent to the Administrator monthly or at such other intervals as the Administrator may direct, with an appropriate voucher, and the amount of such compensation, if approved, shall be promptly paid to the Clearing Agent.

4. *Standard of performance.* In the discharge of its duties and obligations pursuant to this Agreement, the Clearing Agent shall conform to a standard of performance and accuracy reasonably to be expected of an insurance company in the administration of its own business and consistent with the highest degree of good faith. It is agreed, however, that the Clearing Agent shall not be responsible for errors or omissions of agents or employees in whose selection and supervision it has exercised reasonable care, provided, however, that the Clearing Agent, in any such case, shall have conformed to the standards of performance required hereunder, and provided further, that the Clearing Agent assumes full and complete responsibility for the disposition of any funds received by it or its agents or employees under and pursuant to this Agreement. The exercise of reasonable care in the selection of agents and employees by the Clearing Agent shall be deemed to include a determination by the Clearing Agent that the agents or employees so selected are experienced in the transaction of such phases of the marine insurance business as may be delegated to such agents or employees by the Clearing Agent.

5. *Writing insurance for own account.* It is understood that the Participating Members of the Association constituting the Clearing Agent are or may be engaged in writing for their own account war risk insurance, as well as other types of insurance, for the benefit of holders of policies issued by the Clearing Agent hereunder and of other parties; and it is agreed that such insurance may be written notwithstanding the activities of the Clearing Agent hereunder on behalf of the Administrator, pursuant to this Agreement.

6. *Books and records*—(a) *Maintained subject to audit.* The Clearing Agent shall keep books, records and accounts covering the operations and activities under this Agreement which shall be the property of the United States represented by the Administrator and shall be kept separate from those relating to other business of the Clearing Agent or of the Participating Members thereof, in accordance with regulations made from time to time by the Administrator, and shall at all times be subject to audit and inspection by the Administrator.

(b) *Comptroller General may examine.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers and records of the Clearing Agent or of the Participating Members thereof in the performance of and involving transactions related to this Agreement.

7. *Act only as agent.* The Clearing Agent shall act only in the capacity of agent for the Administrator as principal, in the performance of the functions provided for hereunder. The Clearing Agent shall have no authority other than as provided in this Agreement and in the rules, regulations and instructions issued to it by the Administrator under and pursuant to this Agreement.

8. *Special circumstances*—(a) *Reimbursement of taxes and fees.* In the event that the Clearing Agent or any Participating Member or Members thereof, after giving notice to the Administrator, shall be compelled to pay to the United States, its territories or possessions, or to any State of the United States or political subdivision thereof, or to any foreign country or political subdivision thereof, any tax (excepting income taxes of every nature) or fee or interest or penalty relating thereto claimed to be due by reason of the business transacted pursuant to this Agreement and which would not have been payable except for the activities of the Clearing Agent hereunder, the Administrator shall reimburse the Clearing Agent and any Participating Member or Members therefor and for any special expenses necessarily incurred in connection therewith.

(b) *Indemnification.* If any legal suit or proceeding (whether or not based on negligence) is brought against the Clearing Agent or any Participating Member or Members thereof on account of anything done or not done, by the Clearing Agent or any Participating Member or Members thereof or the Administrator, in connection with the issuance or non-issuance or cancellation of insurance on behalf of the Administrator or the payment or non-payment of claims for loss or return premiums arising thereunder (including, without in any way limiting the foregoing, anything done or not done pursuant to any rules, regulations, or instructions of the Administrator or anything done or not done in conflict with or because of any limitation on the powers of the Administrator), the Administrator shall, upon due notice and at the expense of the United States, defend any such proceeding. If, in or as a result of any such legal suit or proceeding, the Clearing Agent or any Participating Member or Members thereof be compelled or required to make any payment or incur any expense, the Administrator shall reimburse the Clearing Agent or any Participating Member or Members thereof for the amount thereof; provided always that the Administrator shall not be obligated to make any such reimbursement unless, in connection with the action complained of, the Clearing Agent shall have complied with the standard of performance required thereunder. In any of the foregoing cases, the Clearing Agent shall render to the Administrator such reasonable cooperation and assistance as the Administrator may require.

9. *Effective date, amendment, termination.* This Agreement shall become effective as of the date of its execution by the Administrator and shall continue in force until terminated. This Agreement may be terminated, modified or amended at any time by mutual written consent. Once this Agreement becomes effective, it shall continue in force until terminated by mutual written consent or by either party, giving at least thirty (30) days' written notice by registered mail to the other party, stating the effective date and time on which this Agreement shall terminate. Such termination shall not affect the obligations of the parties hereto with respect to any binders or policies of insurance issued or expenditures incurred prior to the effective date of such termination.

10. *No commission or contingent fee.* The Clearing Agent warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Clearing Agent for the purpose of securing business. For breach or violation of this warranty the Administrator shall have the right to annul this contract without liability or in his discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

11. *No discrimination.* In connection with the performance of work under this contract, the Clearing Agent agrees not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

12. *No member or delegate.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

13. *Renegotiation.* This contract shall be subject to any act of the Congress, whether heretofore or hereafter enacted and to the extent indicated therein, providing for the renegotiation of said contract and shall be deemed to contain all of the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions.

The contractor (which term as used in this sentence means the party contracting to perform the work or furnish the materials required by this contract) shall insert the provisions of this article in each subcontract and purchase order made or issued in carrying out the contract.

Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the Congress, heretofore or hereafter enacted.

14. *Participating Members*—(a) *Indebted to United States.* The Participating Members of the association constituting the Clearing Agent, severally but not jointly and limited each to its participation therein, shall be indebted to the United States for such amounts as the Secretary is entitled to recover from the Clearing Agent in accordance with the foregoing provisions and, in the event of failure to pay on demand, the Secretary may bring an action or actions in any court in the United States to recover such amount or amounts from the Participating Members, severally but not jointly, on behalf of the United States.

(b) *Change of shares.* Without cancelling this Agreement, the Participating Members of the association constituting the Clearing Agent may, upon not less than ten (10) days' prior written notice to the Administrator, change their share of participation by agreement among themselves, including the termination of the interests of one Participating Member and the assumption of its share by one or more of the other Participating Members or by the admission of other eligible domestic insurance companies to membership in the association. Any such change of apportionment or termination of participation shall not relieve any Participating Member of its obligations in respect to matters which occurred prior to any change or termination of its interest. Unless the Clearing Agent is notified in writing by the Administrator, within ten (10) days after receipt of notice from the Clearing Agent, that the proposed change in participation or termination or assumption is disapproved, such change shall be understood to be acceptable to the Administrator.

In witness whereof, the parties hereto have duly executed this Agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF AMERICA,
SECRETARY OF COMMERCE,
By: MARITIME ADMINISTRATOR.

_____
(Maritime Administrator)

_____
(Clearing Agent)
By:

_____

Attest:

_____

Attest:

_____

Approved as to form:

_____
(Assistant General Counsel, Maritime Administration)

I, _____, certify that I am the duly chosen, qualified, and acting Secretary of _____, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that _____, who signed this Agreement on behalf of said association, was then the duly qualified _____ of said association; that said officer affixed his manual signature to said agreement in his official capacity as said officer for and on behalf of said association by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the lawful powers of this association.

_____

§ 308.552 *Effective date.* This subpart shall become effective as and when the Secretary of Commerce finds that war risk cargo insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

By order of the Maritime Administrator.

Dated: February 20, 1957.

JAMES L. PIMPER,
Secretary.

[F. R. Doc. 57-1490; Filed, Feb. 27, 1957; 8:47 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter A—Alaska

PART 3—OPERATION OF U. S. M. S. "NORTH STAR" BETWEEN SEATTLE, WASH., AND STATIONS OF THE BUREAU OF INDIAN AFFAIRS AND OTHER GOVERNMENT AGENCIES, ALASKA

There was published in the FEDERAL REGISTER of October 25, 1956 (21 F. R. 8192) notice of intention to revise 25 CFR Part 3 dealing with the operation of the U. S. M. S. "North Star."

All interested persons were given opportunity to submit views, data and arguments within thirty days from the date of such publication. The views, data and arguments received have been considered and the regulations as proposed are adopted as set forth below with the following change: Section 3.9, *Preferential passengers* is amended to include "Public Health Service personnel traveling in behalf of the Indian health program, and their families."

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 19, 1957.

Sec.
3.1 Responsibility for operation.
3.2 Transportation of freight for Federal agencies and others.
3.3 Employment of natives.
3.4 Prohibition of trade with natives.
3.5 Passenger rates.
3.6 Private passengers.
3.7 Transportation of children.
3.8 Transportation of Federal employees and their families and natives.
3.9 Preferential passengers.

AUTHORITY: §§ 3.1 to 3.9 issued under R. S. 161; 5 U. S. C. 22.

§ 3.1 *Responsibility for operation.* (a) The Administrative Officer and Special Representative of the Area Director, Juneau Area Office, Bureau of Indian Affairs, with offices in Seattle, Washington, has responsibility for the operation of the ship for the Department of the Interior, Bureau of Indian Affairs, including repair, upkeep, payment of bills and employment of personnel.

(b) Itineraries for each voyage shall be made by the Administrative Officer and Special Representative in consultation with the Area Director of the Bureau of Indian Affairs, Juneau, Alaska. Preference is to be accorded to the work of the Bureau of Indian Affairs. The Area Director is vested with authority to direct the use of the ship to perform special services which may arise and to act in any emergency.

§ 3.2 *Transportation of freight for Federal agencies and others.* (a) All agencies of the Federal Government, including activities of the Bureau of Indian Affairs, Alaskan Natives, cooperatives of Alaskan Natives, business enterprises owned and operated by Alaskan Natives and Federal employees shall be charged for freight, lighterage and longshoring and other terminal charges in accordance with tariff rates and terminal charges established by the Commissioner of Indian Affairs.

(b) Baggage and other personal property of passengers that cannot be readily accommodated in the passengers' staterooms will be manifested as freight and charged for at the established rates.

(c) Commercial freight may be carried between points where adequate service is not provided by commercial vessels. Commercial freight, when carried, shall be prepaid at the same tariff rates established under paragraph (a) of this section.

(d) All freight accepted must be properly manifested, giving the name and address of the consignor and the consignee, and a description of the goods, including gross weight.

(e) Freight will be accepted only on condition that the United States will not be held responsible for any loss, damage or non-delivery.

§ 3.3 *Employment of Natives.* Natives shall be employed on the "North Star" to fill all positions for which they are qualified.

§ 3.4 *Prohibition of trade with Natives.* Officers and members of the crew on the vessel are prohibited from engaging in trade with the Natives.

§ 3.5 *Passenger rates.* Rates for transportation of passengers shall be established by the Commissioner and shall be the same for all passengers, except as provided in § 3.7. Rates shall be on file for public inspection at the Bureau of Indian Affairs offices in Seattle, Washington and Juneau, Alaska.

§ 3.6 *Private passengers.* No private passengers (except Federal employees and their families and Natives of Alaska) shall be transported on the "North Star" between points where adequate services are provided by commercial vessels. Where such commercial vessels are not available, and where accommodations can be furnished on the "North Star" without detriment to Government business, private travelers may be transported at the rates established pursuant to § 3.5.

§ 3.7 *Transportation of children.* The rates established for the transportation of children shall be subject to the following rules:

(a) No charge shall be made for transportation of children under two years of age.

(b) Children who have reached their second birthday, but not their twelfth birthday shall be transported at half the rate established pursuant to § 3.5 for all other passengers.

§ 3.8 *Transportation of Federal employees and their families and Natives.* (a) All agencies of the Federal Government will be billed at the rates established pursuant to § 3.5 for each employee traveling on official business.

(b) When not in official travel status, Federal employees and families of Federal employees will be transported at the rates established pursuant to § 3.5.

(c) Natives of Alaska, who are not indigent, will be charged the same rates as all other passengers.

§ 3.9 *Preferential passengers.* In the booking of passage on the ship, preference shall be given to employees of the Bureau of Indian Affairs and their families, to Natives of Alaska, and to Public Health Service personnel traveling in behalf of the Indian health program, and their families.

[F. R. Doc. 57-1492; Filed, Feb. 27, 1957; 8:48 a. m.]

Subchapter E—Credit to Indians

PART 27—LOANS TO CHIPPEWA INDIAN MARKETING ASSOCIATION

PART 30—AUTHORITY OF COMMISSIONER AND SUPERINTENDENT

REVOCATION OF PARTS

Parts 27 and 30 are hereby revoked.

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 20, 1957.

[F. R. Doc. 57-1495; Filed, Feb. 27, 1957; 8:48 a. m.]

Subchapter G—Enrollment and Reallotment of Indians

PART 51—ENROLLMENT OF MENOMINEE INDIANS, WISCONSIN

PART 53—REVISION OF THE ROLL OF THE INDIANS OF CALIFORNIA APPROVED MAY 17, 1933

PART 57—ENROLLMENT OF CONFEDERATED TRIBES OF SILETZ INDIANS

Subchapter U—Records

PART 246—TRANSFER OF RECORDS OF OKLAHOMA INDIAN TRIBES TO OKLAHOMA HISTORICAL SOCIETY

REVOCATION OF PARTS

1. Parts 51, 53, and 57 are hereby revoked.

2. The designation Subchapter U—Records is hereby deleted and Part 246 is hereby revoked.

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 19, 1957.

[F. R. Doc. 57-1491; Filed, Feb. 27, 1957; 8:48 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 16]

CONVERSION OF CURRENCY

NOTICE OF PROPOSED DESIGNATION OF THE PHILIPPINE ISLANDS AS A QUARTERLY RATE COUNTRY

Notice is hereby given that pursuant to section 522 (c) (1) (B) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (31 U. S. C. 372 (c) (1) (B)), it is proposed to designate the Philippine Islands as a country whose currency shall be subject to conversion for customs purposes in accordance with the applicable law and regulations at the rate first certified by the Federal Reserve Bank of New York for a day within the quarter beginning April 1, 1956, and each quarter thereafter by amending the list of countries set forth at the end of paragraph (d) of § 16.4 of the Customs Regulations by adding thereto the "Philippine Islands" effective commencing with April 1, 1957.

This notice is published pursuant to section 4 of the Administrative Procedure Act (5 U. S. C. 1003). Data, views, or arguments with respect to the proposed designation of the Philippine Islands may be addressed to the Commissioner of Customs, Bureau of Customs, Washington 25, D. C., in writing. To insure consideration of such communications they must be received in the Bureau of Customs not later than 15 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: February 26, 1957.

DAVID W. KENDALL,
Acting Secretary of the Treasury.

[F. R. Doc. 57-1559; Filed, Feb. 27, 1957; 8:59 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 927]

MILK IN NEW YORK METROPOLITAN MILK MARKETING AREA

CLASSIFICATION AND ACCOUNTING RULES AND REGULATIONS; NOTICE OF PUBLIC MEETING FOR CONSIDERATION OF PROPOSED AMENDMENT TO RULES AND REGULATIONS

Pursuant to provisions of § 927.36 of the order, as amended (7 CFR Part 927), regulating the handling of milk in the New York metropolitan milk marketing area, and of the Administrative Procedure Act (5 U. S. C. 1001 et seq.), notice is hereby given of a public meeting to be held on March 4, 1957, at 10 a. m., e. s. t., at the Office of the Market Administrator, 205 East Forty-second Street, New York, New York, for consideration of proposed rules and regulations heretofore issued (7 CFR § 927.101 et seq.) pursuant to said order. Interested persons will be afforded an opportunity to participate in the meeting through the submission of written data, views or arguments or to present the same orally. Copies of the said rules and regulations as heretofore issued and of the proposed amendments to be considered at this public meeting may be procured from the Market Administrator.

The proposed amendment to be considered at said public meeting is as follows: By Grandview Dairy, Inc. and Queens Farms Dairy, Inc.

1. Amend § 927.108 as follows:

§ 927.108 *Cultured or flavored milk drink.* "Cultured or flavored milk drink" means a flavored or cultured beverage containing milk or skim milk but not more than 15 percent butterfat, or the mixture from such product is made at any plant. This definition includes but is not limited to the products properly known as buttermilk, chocolate milk, chocolate drink, egg nog and yogurt.

2. Amend § 927.122 as follows:

§ 927.122 *Homogenized mixture.* "Homogenized mixture" means a product which results from homogenizing a mixture containing milk solids, moisture, and sugar (or other sweetening agent) or other ingredients. It shall contain not less than 5.0 percent sugar (or other sweetening agent) or other ingredients, and not less than 5.0 percent moisture. This definition shall be deemed to exclude any product which is included under § 927.108.

Issued at New York, N. Y., this 25th day of February 1957.

[SEAL] C. J. BLANFORD,
Market Administrator.

[F. R. Doc. 57-1580; Filed, Feb. 27, 1957; 9:33 a. m.]

[7 CFR Parts 927, 990]

[Docket Nos. AO-71-A-32; AO-284]

HANDLING OF MILK IN NEW YORK METROPOLITAN MARKETING AREA AND IN NORTHERN NEW JERSEY

SUPPLEMENTAL NOTICE OF HEARING

The original notice of hearing in this proceeding was issued on May 18, 1956 (21 F. R. 3527) and supplemental notices of hearing were issued on May 29, 1956 (21 F. R. 3799) and on August 29, 1956 (21 F. R. 6680) on a proposed marketing agreement and order regulating the handling of milk in Northern New Jersey and on proposed amendments to the tentative marketing agreement and to the order as amended regulating the handling of milk in the New York metropolitan milk marketing area, including proposals designed to provide coordinated regulation of the handling of all milk proposed to be subject to regulation.

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, (7 U. S. C. et seq.) and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and orders (7 CFR Part 900), notice is given that the notices heretofore issued are hereby amended to include consideration of whether, on the basis of the entire record in this proceeding, a single marketing agreement and order regulating the handling of milk for a marketing area consisting of all the territory in the States of New York and New Jersey for which regulation has been proposed should be issued and would better effectuate the purposes of the act than two or more separate marketing agreements and orders for such territory. Evidence also will be received (1) with respect to specific terms and provisions of such a single marketing agreement and order and (2) as to whether such a single marketing agreement and order, if issued, should be issued in the form of a new marketing agreement and order or by amending Order No. 27.

It has been proposed by certain producer organizations that the terms and provisions of such a single marketing agreement and order be those presently contained in Order No. 27 except for revision of the definition of marketing area and other appropriate modifications, and except that such terms and provisions should be changed in the following respects:

1. *Pool plant provisions.* (a) Permanent pool plant status shall be limited to those plants which are presently designated under Order No. 27, or are historically related to the Northern New Jersey market, and such status shall be permanently lost if such designation is cancelled either by request of the handler or for failure to meet the requirements with respect to sanitary operation and supplying the market during a shortage. Any other plants would be pool plants only on the basis of supplying fluid milk to the marketing area. Provision shall be made, however, for a handler to replace a plant with permanent status which is closed.

(b) Handlers may request that permanent pool plant designations be withdrawn only in the months immediately prior to the flush season. Order No. 27 presently permits withdrawal of designation by the handler only during and immediately after the flush season.

(c) Provisions for being a pool plant on the basis of supplying fluid milk to the market shall require that any plant in the pool on this basis during April, May or June shall also be a pool plant in any of the nine months of the ensuing period of July through March in which such plant utilized not less than 60 percent of its receipts from producers as fluid milk either inside or outside the marketing area (Class I-A and Class I-B combined).

(d) With respect to pricing provisions for out-of-market milk designed to discourage its being dumped into the pool,

it is proposed that the price for such milk be the Class I-A price plus 10 percent during months (July through December) when other markets have historically called on the New York pool for supplemental supplies.

(These proposals are made with the belief that other proposals, particularly for zone differentials and a base rating plan, will be effective in maintaining a tight pool.)

2. *Direct delivery differential.* A provision for direct differential shall be included and shall be in conformity with the following points:

(a) It shall be paid by the handler rather than out of the pool.

(b) It shall recognize the inherent differences between (1) Metropolitan New York and New Jersey where alternatives to direct delivery receipts are receipts from country plants, and (2) Upstate New York where country plant milk does not constitute a reasonable alternative to direct delivery milk.

(c) It shall recognize the savings in cost of handling milk through one plant rather than two.

(d) It shall recognize the savings in the fixed part of the cost of transporting milk from a country plant to a pasteurizing plant (the variable part being reflected in transportation differentials).

(e) It shall recognize the differences in costs of receiving milk by farm tank pickup and by can delivery.

3. *Base rating plan.* The base rating plan shall be designed more equitably to compensate producers who produce milk in a seasonal pattern more nearly in line with fluid requirements, rather than to limit total production. Accordingly, the proposed base rating plan is one under which:

(a) A new base for each producer is calculated annually on the basis of deliveries to a regulated plant during the months of July through November.

(b) Payment is to be made on established bases during March, April, May, and June following the base forming months.

(c) The price paid for excess milk shall be equivalent to the weighted average price of Class III milk, including butter and cheese.

4. *Transportation differentials.* An arc of basing points shall be established which shall be approximately 15 miles from Columbus Circle in New York and shall include within the arc a large part of the densely populated New York-New Jersey metropolitan area. Under this provision parts of Westchester County will no longer be in the 1-10 mile zone. Plants located in New Jersey will be zoned on the basis of distance to one of the points in New Jersey.

Concerning the rate of transportation differentials, the following is proposed:

(a) Differentials paid by handlers shall directly reflect variable transportation costs for milk of 1.4 cents for each 10 miles. This rate will apply in all zones for Class I-A and I-B milk. The differentials set forth in Order No. 27 shall apply for Class II and Class III milk.

(b) Differentials applied to producer payments for base milk shall be those paid for Class I-A and I-B milk. There shall be no transportation differential applied to producer payments for excess milk. During months when payments are not being made in accordance with the base rating plan, the differentials for plants beyond the 201-210 mile zone shall be such that the decline in price due to the transportation adjustment shall be half way between the present decline and the proposed decline for Class I-A milk.

5. *Special location differential.* A special location differential payable on base milk in those months when payment is made on the basis of established bases, and on all milk in other months shall be included which meets the conditions set forth below:

(a) The amount of differential should decline as the percentage utilization of milk in fluid classes increased, and the differential would increase as the percentage utilization in fluid classes declined.

(b) The rates should decline as the established mileage zones increased, and should taper off to about the 111-120 mile zone beyond which no differential would be paid.

(c) The specific rates shall be as set forth in the following table:

PERCENTAGE UTILIZATION IN CLASS I

Mileage zone	Under 45	45 to 50	50 to 55	55 to 60	60 to 65	65 to 70	70 to 75	75 to 80	Over 80
	8	7	6	5	4	3	2	1	0
1-50	0.64	0.56	0.48	0.40	0.32	0.24	0.16	0.08	0
51-60	.56	.49	.42	.35	.28	.21	.14	.07	0
61-70	.48	.42	.36	.30	.24	.18	.12	.06	0
71-80	.40	.35	.30	.25	.20	.15	.10	.05	0
81-90	.32	.28	.24	.20	.16	.12	.08	.04	0
91-100	.24	.21	.18	.15	.12	.09	.06	.03	0
101-110	.16	.14	.12	.10	.08	.06	.04	.02	0
111-120	.08	.07	.06	.05	.04	.03	.02	.01	0

The entire State of New Jersey shall be considered to be in the 1-50 mile zone.

Dutchess and Columbia Counties, and the eastern halves of Ulster and Greene Counties shall be considered to be in the 81-90 mile zone.

(d) The rates shall be reduced proportionately as receipts of milk qualified for location differentials increase in relation to fluid utilization in the pool.

(e) The zones for location differential purposes shall be based on the location of the farm rather than the plant at which such milk is received.

6. *Cooperative payments.* A provision for cooperative payments for a nearby cooperative shall be in accordance with the following:

(a) Such payments shall be justified independently, and the basis for payments now provided for under Order No. 27 should not be relied upon.

(b) Provision for such payments shall be made in a manner which would not weaken the basis for cooperative payment provisions under Order No. 27.

(c) Provisions shall be made to insure that the specified services will be performed.

(d) This type of payment shall be paid to one cooperative only.

7. *Relating to peripheral milk.* Provisions of Order No. 27 now applicable under which plants become subject to regulation on the basis of fluid sales in the marketing area, and provisions for compensatory payments shall apply except that:

(a) Plants outside the marketing area with a quantity of route sales in the marketing area insufficient to subject the plant to full regulation, but with not less than 60 percent of its receipts from farmers utilized in fluid form (Class I-A and I-B combined), shall have the option of (1) being a pool plant for the month (thus becoming subject to full regulation), or (2) making compensatory payments (at the full rate presently provided under Order No. 27 on fluid sales in the marketing area).

(b) Route sales outside the marketing area from a pool plant shall be priced at the Class I-A level rather than at any higher Class I-B price which might be established for out-of-area sales in connection with proposals under point 2 above.

The above proposals have not received the approval of the Secretary of Agriculture.

Copies of this supplemental notice of hearing may be procured from the Market Administrator, 205 East 42d Street, New York 17, New York, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: February 26, 1957, Washington, D. C.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 57-1581; Filed, Feb. 27, 1957; 9:33 a. m.]

[7 CFR Part 944]

[Docket No. AO-105-A11]

HANDLING OF MILK IN QUAD CITIES MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER AMENDING ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), hereinafter referred to as the act and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900) notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order amending the order, as amended, regulating the handling of milk in the Quad Cities marketing area. Interested parties may file written exceptions to the decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed marketing agreement and order was formulated, was conducted at Rock Island, Illinois, on June 11–13, 1956, pursuant to notice thereof which was issued on May 15, 1956 (21 F. R. 3291).

The material issues relate to:

(1) Expansion of the marketing area;

(2) Qualifications for attaining pool plant status;

(3) Modification of the producer definition;

(4) Level of the Class I price;

(5) Class II and Class III milk; classification and pricing;

(6) Reduction of the Class I butterfat differential;

(7) The application of location differentials on class prices and in paying producers;

(8) Payments on unpriced milk disposed of in the marketing area from a nonpool plant;

(9) Discontinuing the requirement for making payment on milk distributed in the marketing area by a handler subject to another Federal order;

(10) Allocation of producer milk moved to a nonpool plant for custom bottling;

(11) Utilizing a base and excess plan or a "Louisville plan" for distributing returns to producers;

(12) Requiring a handler making payment to a producer of more than the uniform price to make such payments uniformly to all producers; and

(13) Miscellaneous administrative and conforming changes.

Findings and conclusions. The following findings and conclusions on the material issues are based upon the evidence in the record of hearing:

1. The marketing area as defined in the order should not be changed at this time.

As now set forth in the order the marketing area contains (1) in Iowa: the cities of Davenport, Bettendorf, Clinton, and Commanche, the townships of Davenport, Rockingham, and Pleasant Valley in Scott County, and part of Commanche township (in addition to the city of Commanche) in Clinton County; and (2) in Illinois: the cities of Rock Island, Moline, East Moline, and Silvis, and the Rock Island County townships of South Moline, Moline, Black Hawk, Coal Valley, Hampton, and South Rock Island.

Proposals made by the major producer associations in the market would expand the marketing area to include all the territory within (1) the Iowa counties of Clinton, Scott, Jackson, and Muscatine; and (2) the Illinois counties of Rock Island, Mercer, Carroll, Whiteside, and Lee.

At the hearing, producer organizations abandoned their proposals. However, various handler representatives testified that the area should be enlarged to include the suburban communities adjacent to the various cities in the market and much of the expanse of territory between Clinton and the Quad Cities. In support of their position, handlers cited the population increase in recent years in the suburban communities, the desirability of having a more contiguous marketing area and the fact that no additional handlers would be regulated by the expansion which they proposed.

Testimony in support of enlarging the marketing area was general in nature. Although there might be some justification for enlarging the area, the specific data and relevant statistics which are needed in order to take action on such a proposal were not presented at the hearing. Moreover, while handlers claimed that expansion of the area would not result in the extension of regulation to any handler not now regulated, neither did they show what benefits, if any, would accrue by enlarging the Quad Cities marketing area at this time.

2. The order should be revised to prescribe standards based on association with the market for qualifying a plant as a pool plant. As now provided in the order, a pool plant is (a) any plant from which Grade A milk is disposed of on a route or through a plant store in the marketing area, (b) a plant which is owned and operated by a cooperative association and which is located in the marketing area, and (c) a plant which "regularly" disposes of Grade A milk to a pool plant from which milk is distributed in the marketing area.

The basis for determining which plants shall be pool plants under the Quad Cities order, and thereby fully subject to regulation, should be clearly set forth in the order and apply uniformly to all plants, wherever located. Pool plant status should not be determined solely on an occasional shipment of milk to the market, or on approval by a specified health authority. Such a method for determining which plants shall be subject to regulation would not provide a workable basis for administering the order in conjunction with the other provisions recommended in the decision.

Since a marketwide pool, such as is contained in the Quad Cities order, results in payment to all producers on an average utilization for the market, individual handlers are relieved of any responsibility for maintaining a high Class I utilization in order to support their pay rates to producers. Whatever utilization of milk a handler may have, his rate of payment to producers will be the same as that of all other handlers in the market. Thus, it is possible that status with respect to the pool may become a determining factor in guiding a handler's operation.

The scope of pooling or the rules for distributing the returns from Class I sales under the order must be such that the differentials over manufacturing milk values paid by users of Class I milk will serve the purpose for which they are intended. Class I milk prices of the order represent a level which exceeds the value of the milk for manufacturing uses by stated amounts. This premium, or differential, over the manufactured milk price is essential as an incentive to producers for producing milk of the quality and volume required by the market. Extra costs are involved in meeting the sanitary requirements relative to the maintenance of a dairy herd for the production of Grade A milk and in providing milk during the fall and winter months when feed and housing costs are high. Extra costs are involved also on farms since milk for fluid use must be handled through sanitary utensils and facilities, refrigerated and marketed promptly.

The extra costs thus involved for Grade A or fluid milk producers must be borne by that share of the milk which is marketed as Class I milk. Excess or "surplus" milk, although an essential part of a fluid milk business, cannot be expected to return more to producers than a manufactured milk value. The only outlet for reserve milk not needed for fluid use is in the form of manufactured products. Such products must be marketed in competition with similar products made throughout the country.

Since the production of high quality milk involves extra expenses, it is important that the amount of milk produced under Grade A inspection be no more than the minimum necessary to provide the market with an adequate and dependable supply of quality milk. To encourage more than enough production of such milk would represent an economic waste, since the expenditures involved in producing Grade A milk not an essential part of the market supply would result in no extra value to consumers.

One of the primary problems in a marketwide pool is to establish rules which will provide for the sharing of Class I sales (Class I differentials) among the producers who are an essential and regular part of the milk supply for the marketing area.

Class I prices must first be set as nearly as possible at the minimum levels which will encourage the necessary amount of milk production and the resulting returns should be distributed in such a way as to assure the market of the maximum dependable supply of quality milk which can be obtained at these prices. In order to do this, provision is made that equalization of market sales should be only to plants meeting reasonable performance standards with respect to supplying their producer milk to the market.

Performance standards should apply uniformly to all plants. Any plant, regardless of its location, should have equal opportunity to comply with the standards and thereby to participate in the marketwide pool and have its producers share in the Class I sales of the market. Any producer who meets the necessary health department requirements should be permitted, under the order, to sell his milk to plants meeting the standards of qualification. Whether or not plants and producers choose to supply the Quad Cities market will depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Performance standards should be such that any plant which has as its major function the supplying of milk to the market would pool its sales and share in the marketwide equalization. On the other hand, plants only casually, or incidentally, associated with the market should not be subject to complete regulation, nor should they be permitted or

required to equalize their sales with all handlers in the market. If a milk plant were to be permitted to share on a pro rata basis the Class I utilization of the entire market without being genuinely associated with the market, then the premiums or differentials paid by users of Class I milk would be dissipated without accomplishing their intended purpose. If a plant were to be qualified and fully regulated merely by making a token shipment of milk or cream into the market for sale as Class I milk, then any milk plant which found itself in a position where it was selling a smaller share of its milk in Class I than the average for all regulated handlers might make such shipment and receive equalization payments from the pool. The only qualification such a plant would be required to meet would be compliance with the necessary health department standards.

The mere circumstance of having obtained health department approval, plus the token shipment of milk, is not sufficient justification for equalizing the sales of such plant with the market. There are many plants having milk of suitable quality for sale in the marketing area which are in no way, or are only incidentally, associated with the market. Different health authorities have jurisdiction in various parts of the marketing area. In the absence of performance standards, approval by any one of these authorities or reciprocal acceptance of permits by them would entitle a plant to participate in the equalization pool. A health officer gives his approval to a plant in terms of sanitary consideration. There is no reason to think that he would make his determination of approval only on the economic bases contemplated by the Agricultural Marketing Agreement Act of 1937. Consequently, the standards appropriate to the act for determining pool plant qualification must be set out in the order.

Since reserve milk is an essential part of any fluid milk business there will always be some excess milk in the plants of handlers supplying other markets. This will be particularly true in the months of flush production. Plants selling primarily to other markets, or plants shipping milk on an opportunity basis to any market where supplies happen to be short, do not represent sources of milk on which the Quad Cities market may depend. If such plants were allowed to sell a token quantity of milk in the marketing area and pool their surplus whenever Class I outlets were not available to them, the result would be that such handlers could gain an advantage in paying producers through receipt of equalization payments from the Quad Cities pool.

The Quad Cities market, however, would gain no advantage from the payment of equalization to such a handler. Such a distribution of equalization payments would, in fact, reduce the blend price to producers regularly supplying the market, thereby having an adverse effect on the milk supplies upon which the market depends. This could result in the need for higher Class I prices than would otherwise be required to supply the market adequately.

Performance standards must be flexible enough to allow a plant which is primarily associated with the market to maintain its association with the pool under the changing conditions which occur from year to year, and yet not permit the distribution of equalization payments to plants not part of the essential supply. The performance standards herein provided are such that these objectives should be accomplished.

Because of the difference in marketing practices and in demands for supply of milk from distributing plants as related to supply plants, two sets of performance standards have been provided. A "distributing plant" under the order would be defined as a plant in which milk is processed or packaged and from which any fluid milk product (as hereinafter defined) is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area. "Supply plant" would be defined to mean a plant (except a distributing plant) from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a distributing plant which is qualified as a pool plant.

In order to qualify as a pool plant, a distributing plant should be required to distribute at least 15 percent of its milk from producers and other plants during the month as Class I milk on retail or wholesale routes to outlets in the marketing area.

A distributing plant having more than 85 percent of its business outside the marketing area or in other outlets should not be considered as essentially associated with the market. It is not considered advisable to bring such a plant under full regulation because of the minor share of its business which is in the marketing area. Full regulation in such case would not be necessary to accomplish the purposes of the order, and might well place such plant at a competitive disadvantage in relation to its competitors in supplying the unregulated market.

Such a minimum is necessary also to avoid the possibility that a plant otherwise not associated with the market might qualify itself for equalization payments to its own advantage, and to the disadvantage of the market, by means of minor sales in the marketing area.

It is contemplated that only plants primarily engaged in route distributions of fluid milk products should be qualified as pool plants under this definition. In order to preserve this distinction, a further condition is placed on distributing plants that their total distribution of Class I milk on routes to wholesale or retail outlets, both inside and outside the marketing area, must amount during the month to at least 35 percent of their receipts of milk from dairy farmers and from other plants. Any plant which does not qualify on this basis should be deemed to be primarily a supply plant and its status under the pool should be judged by the standards applied to such plants.

The various plants handling milk for fluid distribution in the marketing area dispose of their milk in such a way as to exceed by a considerable margin the minimum performance standards necessary to qualify as pool plants. There may from time to time be plants supplying milk to the marketing area which would not qualify for pool status. Such plants would be subject to payments hereinafter discussed if they are not fully subject to regulation.

The performance standards for supply plants to qualify for pool plant status should reflect the fact that currently the quantity of milk produced for the Quad Cities market is adequate on an annual basis for the needs of the market. At times, especially during the months of seasonally high production, distributors in the market have not needed all of the milk available from producers in order to keep their Class I outlets fully supplied. In order to assure that all the producers' milk which is pooled with the market will be available for Class I, supply plant standards should be set at levels which require that the milk will be available. However, if conditions in the market should change so that the percentage standards herein recommended are not necessary to assure the availability of such producer milk for Class I sales, the recommended standards should be subject to further review.

Under present circumstances it is concluded that in order to qualify for pool plant status a supply plant should ship to distributing plants at least 35 percent of its receipts of milk from dairy farmers in any month in the form of supplemental supplies of fluid milk products, as hereinafter defined. A supply plant from which a proportionately lesser quantity of milk is disposed of in this manner should not, under the present conditions in the Quad Cities market, be considered as primarily associated with the regulated market.

It is recognized that the demand for milk from supply plants may vary seasonally and will be greatest during the season of low production. For sustained periods during the months of flush production supplies of milk received at plants located in or near the marketing area may be sufficient to supply the Class I outlets. During this part of the year, it would be more economical to leave the most distant milk in the country for manufacture, and use local supplies for Class I use. The performance provisions should not force milk to be transported to distributing plants in the summertime in order to maintain the eligibility of supply plants to pool.

To avoid this, provision should be made whereby a supply plant may maintain pool plant status throughout the year if it supplies a substantial portion of its producer milk to distributing plants during the months when milk production tends to be lowest. The proposed standards require that a supply plant provide distributing plants with milk to the extent of 50 percent of its producer milk receipts during the period of September

through November to maintain automatic pool status for the months of March through June.

Any distributing plant or supply plant which does not meet the standards for a pool plant should be required to file reports and submit to audits by the market administrator to verify the status of such plant.

A finding is made elsewhere in this decision (Issue No. 9) that when milk distributed in the marketing area is from plants which dispose of a major portion of their receipts in another regulated area and which are fully subject to the classification, pricing and pooling provisions of another Federal milk marketing order, it is not necessary to extend full regulation under this order to such plants. To do so would subject such plants to duplicate regulation. However, in order that the market administrator may be fully apprised of the continuing status of such a plant, the operator thereof should, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

A proposal at the hearing would define as a "reload point" a location at which milk received at producers' farms in a tank truck is transferred to another truck for delivery to a milk plant and would give the status of a plant location to the reload point. Such a provision, besides being of doubtful value for the Quad Cities market, would tend to make unnecessarily complex the application of the pool plant provisions herein recommended. Accordingly, the proposal made regarding a reload point is denied.

3. Producer should be defined as any person, except a producer-handler, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of April through June, and (2) on not more than one-half the days on which milk was delivered from a farm during any of the other months.

As now provided in the order, to qualify as a producer a dairy farmer must ship to a pool plant and have the approval of the health authority of a municipality in the marketing area or meet the requirements for "Illinois Grade A". Once a person has qualified as a producer his production may be diverted from a pool plant to a nonpool plant at any time during the year and for any period of time. In effect, it is now possible for a dairy farmer to be a producer under the order even though his milk is delivered continuously to a nonpool plant.

Findings are made elsewhere in this decision justifying the establishment of pool plant qualifications based on standards of association with the market and for requiring compensatory payments on unpriced milk received at a pool plant or distributed in the marketing area from a nonpool plant. Accordingly, the producer definition in the order should be revised so as to complement these other provisions.

Whether a farmer qualifies as a producer under the order is based on whether the plant to which he ships is qualified as a pool plant. Under the pool plant definition herein proposed, a plant's qualification as a pool plant is determined on the basis of a minimum specified percentage of the milk received at such plant being distributed as Class I in the marketing area or, in the case of a supply plant, on the basis of a minimum specified percentage of its milk receipts having been shipped to a distributing plant which is a pool plant. If a handler were permitted to divert producer milk in any month and for any length of time to a nonpool plant as now permitted in the order, it would be extremely difficult, if not impossible, to effectuate properly the intent of the pool plant provisions and the provisions relative to payments on unpriced milk.

When producer milk is not needed in the market for Class I purposes the movement of such milk to nonpool plants for manufacturing purposes should be facilitated. Allowing for unlimited diversion only during those months when reserve supplies of milk are heaviest will contribute to this end. Unlimited diversion is neither necessary nor desirable during the months of the year when milk of producers regularly associated with the market is needed to supply the Class I needs of the market. It is necessary, however, to provide for limited diversion during such months to enable handlers to divert producer milk on such occasions as week-ends or holidays when milk is not needed in the market for Class I purposes.

Provision should be made so that milk of producers regularly received at a pool plant may be diverted for the account of a handler to a nonpool plant any day during the months of flush production and with respect to not more than one-half of the days on which milk was delivered from a farm during any of the other months and still retain producer status under the order. As heretofore provided in the order, diverted milk shall be deemed to have been received at the plant from which it was diverted.

Several of the proposals made at the hearing would require that only those dairy farmers who are under the inspection of specified health authorities would be eligible to qualify as producers under the order. One such proposal would revise the present provision of the order so that a shipper under "Illinois Grade A" inspection could not qualify as a producer. Another proposal would revise the scope of the producer definition to include dairy farmers meeting the standards for Grade A of the State of Iowa Health Department. The limitations that would be imposed by designating specified health jurisdictions which shall have the authority to determine which milk shall be subject to regulation under the Quad Cities order would be incompatible with the various other provisions contained in the attached order. The proposals with respect to such limitations are hereby denied.

4. The Class I price should be related directly to the Chicago order Class I price and be fixed each month at the level of the Chicago Class I price plus 20 cents.

The order currently provides that the Class I price shall be the higher of either (a) the Class II price for the preceding month plus a differential of 75 cents for May and June, 95 cents December through April, and $1.15 July through November; or (b) the Chicago order Class I price plus 20 cents.

The Chicago milkshed is one of the principal milk production areas in the United States. At various times throughout the year, especially during the months of low production, milk from this area is shipped great distances to many markets throughout the country. The Chicago order Class I price is used extensively as a recognized price quotation both locally and nationally. It is not uncommon to fix Class I prices in a market on the basis of the price in a major milk marketing area, such as Chicago, or on the basis of obtaining alternative sources of supply from such major market.

Portions of the production area for the Quad Cities and Chicago markets overlap and producers in such localities may shift from one market to the other. Likewise, handlers in the Quad Cities market compete in some localities with handlers under the Chicago order as well as with handlers regulated by other Federal milk marketing orders. In order to insure the maintenance of an adequate supply of milk for the Quad Cities market, it is necessary that an appropriate alignment of prices between markets prevail and that the level of such prices be equitable among handlers whose sales area overlap but who are regulated by different orders.

For June 1956, the Quad Cities order Class I price of $4.34 (Chicago Class I price plus 20 cents) was 59 cents above the price obtained by using the other alternative Class I formula (based on the Quad Cities Class II price for the preceding months). In March 1956, the most recent month for which the Class I price was that based on the Class II price, it was 9 cents above the formula which uses the Chicago Class I price. In the 54 months from January 1952 through June 1956, the Chicago Class I price plus 20 cents averaged $4.31 and was used in 44 months as the Quad Cities order Class I price. The alternative formula based on the Quad Cities order Class II price averaged $4.21 and was used in 10 months as the Class I price.

The Class II price under the Quad Cities order, which is based on the prices paid by local manufacturing plants for ungraded milk, is a measure of the value of milk for manufacturing locally. The Chicago order, on the other hand, does not use the prices paid by these local manufacturing plants to arrive at its Class I price, but uses instead a "basic formula price" which reflects the value of milk for manufacturing purposes nationally. Such a basic formula price is utilized widely in determining Class I

prices in many of the other Federal order markets. As such, it may be expected to be a most appropriate determinant for use in establishing the Class I price each month in the Quad Cities market, especially since handlers in this market must compete in various localities with handlers whose Class I prices are fixed by other orders. Unless handlers regulated by the Quad Cities order are able to anticipate and project the prices they will be required to pay for Class I milk in relation to recognized and established price quotations used in major markets, they will be at a disadvantage with handlers from other markets in competing for Class I sales beyond the confines of the marketing area. Determining the Quad Cities order Class I price on a direct relationship with the Chicago order Class I price and deleting the provision for the alternative Class I formula which uses the prices paid by local manufacturing plants (i. e. the Class II price) will provide a more economically sound basis for determining the Quad Cities order Class I price and thereby contribute toward insuring the maintenance of orderly and stable marketing conditions.

A proposal made by producers would maintain the two alternative formulas now used in arriving at the Class I price and would fix the differential over the Class II price at $1.15 throughout the year, a rate 15 cents more annually than the order now provides. In connection with their request for discontinuing seasonal pricing, producers proposed the incorporation of a "Louisville plan" provision in the order (Issue No. 11). Such a plan provides for setting aside a portion of the payments made by handlers for producer milk received in the spring months of heavy production for distribution to producers for milk produced in the fall months.

Seasonal pricing of Class I milk is provided in the nearby Federal order markets. Quad Cities order handlers must compete with handlers under such other orders in various localities in the procurement of supplies and in the sale of Class I milk. It would be impracticable to eliminate seasonal pricing in the Quad Cities order when the other regulated nearby markets retain such seasonal pricing.

Currently, supplies of milk for the Quad Cities market in relation to its Class I needs are adequate. Producer deliveries of 101.5 million pounds of milk in the first five months of 1956 were 12 million pounds, or 14 percent, above that for the corresponding months of 1955. Class I disposition of 53.3 million pounds in the same 1956 period increased by 3 million pounds, or 6 percent, over the previous year.

Producers cited as their principal reasons for requesting a higher Class I price, (1) rising production costs, and (2) declining uniform prices resulting from larger volumes of milk being pooled. The fact of increasing supplies in relation to Class I sales in this market is adequate proof that Class I prices should not be increased at this time. Accordingly, the proposal to increase the level of the Class I price is denied.

5. Class II milk should include all the butterfat and skim milk heretofore defined as Class II and Class III milk.

As now provided in the order, Class II milk includes all skim milk and butterfat (a) used to produce evaporated milk, condensed milk, ice cream, ice cream mixes, frozen desserts, yogurt, aerated cream products, cottage cheese and any other milk product not specifically mentioned as a Class I or Class III disposition, and (b) disposed of to wholesale bakeries, candy manufacturers, or soup companies. Class III milk is skim milk and butterfat (a) used to produce butter, cheddar cheese, animal feed, casein, and non-fat dry milk solids, and (b) in shrinkage up to 2 percent of the milk received from producers and shrinkage in other source milk.

The Class II price under the order is the average of the prices paid by 7 nearby manufacturing plants (6 in Illinois and 1 in Iowa), for milk received from dairy farmers from the 16th day of the preceding month to the 15th day of the current month. The Class III price is the higher of the prices obtained from two separate formulas which use as their basis (a) the price of "Cheddars" on the Wisconsin Cheese Exchange, and (b) the 92-score Chicago butter price and the price of non-fat dry milk solids, f. o. b. manufacturing plants in the Chicago area.

The amount by which the Class II price exceeds the Class III price varies from month to month. On infrequent occasions, the Class III price has exceeded the Class II price. From 1952 through 1955 the average Class II price of $3.20 was 13 cents above that for Class III. The May 1956 Class II and Class III prices were $3.00 and $2.84, respectively.

The skim milk and butterfat components of Class II and Class III milk are priced by adjusting the announced prices, which are on a 3.5 percent butterfat basis, by their respective butterfat differentials. The Class II butterfat differential is obtained by multiplying the Chicago butter price for the month by 0.120 and that for Class III is calculated by subtracting 6 cents from Chicago butter price, and multiplying the resultant value by 0.120. The Class III butterfat differential for May 1956 was equivalent to 0.108 times the Chicago butter price.

The average difference between the Class II and Class III butterfat differentials from 1952 through 1955 was 0.8 cents per point. The spread of 0.7 cents per point between the May 1956 Class II and Class III butterfat differentials of 7.1 and 6.4 cents, respectively, is equivalent to 7 cents per pound of butterfat and 24.5 cents per hundredweight of 3.5 percent milk. Since the announced Class II price for May 1956 exceeded the Class III price by less than 24.5 cents, the skim classified in Class II was priced at a lesser rate than the skim milk in Class III—51.5 cents compared to 62.4 cents per hundredweight. For 1955 the Class II skim milk price under the order averaged 56.5 cents and that for Class III 63.7 cents.

Various proposals were made to revise the order with respect to assigning different proportionate values to the skim milk and butterfat in Class II and Class III milk. Producers proposed that a separate classification be established for skim milk utilized in the manufacture of cottage cheese and that such skim be priced 25 cents per hundredweight above the skim utilized in Class II. Another proposal would fix the price of skim milk in Class II utilizations at not less than the equivalent of the Class II price for skim milk. There were no proposals to raise the over-all level of the Class II price, but both producer and handler representatives testified that some upward adjustment should be made in the level of the Class III price.

Utilization of pooled milk in Class III is highest in the spring months of heavy production. Of the 8.2 million pounds of producer milk classified in Class III in 1955, 5.2 million pounds, or 63 percent, were thus classified in the months of April, May and June. Although Class III represented only 4 percent of the volume of milk pooled in 1955, the pounds of butterfat in Class III was 17.5 percent of the total butterfat classified.

Revising the Class III price in accordance with some of the proposals made at the hearing would result in its being higher than the Class II price much of the time. It was not established, however, that milk utilized for Class III purposes in the lower valued outlets, such as butter and cheese, could find ready markets throughout the year at a significantly increased price level.

It is recognized that some milk in excess of Class I requirements is necessary to maintain an adequate supply of fluid milk for the market on an annual basis. The price for such milk should be maintained at the highest level consistent with facilitating its movement to manufacturing outlets when it is not needed in the market for Class I purposes. The price, however, should not be so low that handlers will be encouraged to procure milk supplies solely for the purpose of converting them into manufacturing products. Moreover, the price for such excess milk should not be so unreasonably high as to impede or preclude its acceptance at the usually available outlets or so as not to be competitive with milk for manufacturing purposes from alternative sources of supply.

The utilization of skim milk for manufacturing purposes in the Quad Cities market is predominantly in the higher valued manufacturing products, such as cottage cheese. Skim milk thus utilized has heretofore been classified as Class II. As indicated above, however, producers have been receiving a lesser price for such skim than for skim utilized in the production of nonfat dry milk solids (Class III).

Health authorities in the marketing area do not require that skim milk utilized in other than Class I products be obtained from milk or milk products from approved Grade A sources. The prices received by handlers in the Quad Cities market for such products as skim milk powder is established on the basis of quotations at nationally recognized exchanges for trading. Prices thus established are not quoted on the basis of

whether a manufactured milk product is made from Grade A or ungraded milk. This is also true with respect to skim milk utilized in the manufacture of cottage cheese, one of the major dispositions of skim milk in the Quad Cities market.

Handlers in the market who distribute cottage cheese over a wide geographic area compete with handlers selling cottage cheese made from ungraded milk. If the price of skim milk utilized in the manufacture of cottage cheese were raised 25 cents per hundredweight, as proposed, it could result in skim milk from ungraded sources displacing pooled skim in such outlets. Moreover, in supplying the various retail or wholesale outlets both inside and outside the marketing area, handlers utilizing pooled skim milk in the manufacture of cottage cheese would be at an economic disadvantage with competitors using ungraded skim milk in the manufacturing of cottage cheese.

The value of skim milk for manufacturing purposes in the Quad Cities area, irrespective of its source, is above the Class II value of skim milk now provided in the order. During May 1956, when the Class II value of skim milk under the order was 51.5 cents, the Kraft Food Company at one of its nearby plants was paying 90 cents per hundredweight for skim milk. While it was not established that an unlimited market for skim milk would be available at 90 cents per hundredweight, or at a similar level, evidence at the hearing indicated that the proportion of the Class II price now assigned to skim milk results in a price below the market value in the area for skim milk from graded or ungraded milk.

Since skim milk from any source may be used in the various dispositions heretofore contained in Class II or Class III, it is concluded that the price of skim milk in all such dispositions should be fixed at the same level and be classified in Class II.

In reapportioning the Class II price between the skim milk and butterfat thus classified, in conjunction with combining Class II and Class III milk into one class, it is necessary to fix a price for butterfat which will, insofar as is practicable, return the highest price obtainable to producers for such butterfat and at the same time be sufficiently competitive with butterfat from alternative sources of supply so as to maintain a ready and dependable market for excess butterfat throughout the year. This will be best effectuated by pricing butterfat in producer milk classified in Class II at 115 percent of the Chicago butter price in the months of July through March and at 110 percent of the Chicago butter price in April, May and June.

Historically, utilization of butterfat in the manufacture of butter and American type Cheddar cheese in the Quad Cities market has been greatest in the months of heavy production. During these months the lower butterfat differential herein provided (about 3 cents per pound of butterfat less than in other months and about 1.2 cents per pound of butterfat above the Class III price for butterfat now in the order) will facilitate the movement of butterfat in the reserve supplies of milk to manufacturing outlets and thereby eliminate the potentialities of unstable marketing conditions which milk without a market tends to create. In other months of the year the butterfat value of 115 percent of the Chicago butter price should be high enough so as not to give an unnatural incentive to the movement of butterfat to the manufacture of butter and Cheddar cheese at the expense of preferred outlets such as for condensed milk and frozen desserts. Moreover, at a rate of 115 percent of the Chicago butter price during the months of July through March, the cost of butterfat in the Quad Cities market will be competitive with butterfat from alternative sources of supply.

The pricing of skim milk which would be obtained in reapportionment of the Class II price between skim milk and butterfat as herein recommended would be 13 and 5 cents per hundredweight, respectively, above the Class II and Class III prices for skim milk now provided in the order. This change together with that applicable to the assignment of a lower proportionate value of the Class II price to the butterfat classified therein gives recognition to the value of skim milk and butterfat for manufacturing purposes in the Quad Cities area and will be helpful in maintaining stability in the market.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for current receipts and utilization. It has been the practice under the Quad Cities order to classify in the lowest class (usually Class III) the differences by which the volume of butterfat and skim milk in fluid milk products at the end of the month exceed the inventory at the beginning of the month. This practice of classifying inventory variations in the lowest price class should be continued and provision therefor should be clearly set forth in the order.

The accounting procedure will be facilitated by providing that month-end inventories of all fluid milk products be classified in Class II milk, regardless of whether such products are held in bulk or in packages. Inventories of such products on hand will then be subtracted under the allocation procedure from any available Class II milk in the following month. The higher use value of any fluid milk products in inventory which are allocated to Class I milk in the following month should be reflected in returns to producers. The mechanics of the attached order provide for the reclassification of inventories on that basis.

Inventories of products designated as Class I milk on hand at a pool plant at the beginning of any month during which such plant becomes a pool plant for the first time should likewise be allocated to any available Class II utilization of the plant during the month. This will preserve the priority of assignment of current producer receipts to current Class I use.

6. The rate of the Class I butterfat differential should be changed. The differential is now computed by multiplying the average of the daily quotations for 92-score butter at Chicago for the preceding month by 0.140. As provided herein, the factor of 0.140 would be replaced by 0.125.

The Class I butterfat differential in the Quad Cities order is high in relation to the Class I butterfat differential in other markets. As an example, under the Chicago order (with which market Quad Cities handlers have overlapping supply and sales areas) handlers pay a butterfat differential on Class I milk approximating the Chicago 92-score butter price times 0.120.

The high Class I butterfat differential, it was claimed, has been one of the principal reasons for the rapid and continuing decline in the proportion of butterfat contained in the Class I disposition in the market. This decrease of butterfat in Class I utilizations is reflected in the declining fluid cream sales and in a low butterfat content of fluid milk distributed in the market.

A high butterfat differential tends to be a deterrent to increasing the butterfat content of fluid milk products distributed by Quad Cities handlers. The declining proportion of butterfat in the various products in the market is indicated by the average butterfat content of all Class I disposition of 3.75 percent in 1952, 3.63 percent in 1953, 3.60 percent in 1954, and 3.59 percent in 1955.

In the Quad Cities, as in other markets, whole milk in fluid form is the most significant item making up the Class I sales in the market. In May 1956 (the most recent month for which information was available at the hearing) 8.8 of the 10.7 million pounds of the Class I disposition was in the form of whole milk. The average test of this whole milk disposition was 3.425 percent.

The change proposed herein gives recognition to the increasing value of the non-fat solids portion of the milk for fluid purposes in relation to the butterfat portion. The lower rate of the butterfat differential should give some encouragement to the sale of higher fat milk and of cream.

7. It was proposed at the hearing that handlers be allowed a location differential with respect to milk moved from the plant at which it is received from producers to a processing plant. Some of the milk normally supplied to the marketing area is received by handlers at a distance from the plant at which the milk is processed and distributed.

The principal supply plants which are currently pool plants under the order are located at Coggon, Iowa, Mt. Carroll, Illinois, and Manlius, Illinois, and are approximately 95, 62, and 60 miles, respectively, from Rock Island, Illinois, one of the larger cities in the marketing area.

At the present time, all handlers are required to pay the same minimum class prices for milk received from producers regardless of the location of the pool plant at which the milk is received. Consequently, milk received at a supply plant and moved to a plant in the marketing area for processing and packaging may be expected to be more costly to a handler than milk received directly from producers at his processing plant in the marketing area. Likewise, producers delivering milk to supply plants

located at some distance from the marketing area are, in accordance with the present provisions of the order, paid the same uniform price as producers delivering directly to processing plants in the marketing area. On the average, producers shipping to country plants, or supply plants, are significantly closer to the plants to which they deliver than are producers shipping directly to plants in the marketing area. The hauling charges paid by producers shipping to the country plants are less than are paid by producers delivering to marketing area plants and also are below that which the country plant shippers would be required to pay to have milk delivered directly to the marketing area. In effect, therefore, supply plant producers who are farther away from the market receive a better net return for their milk than direct delivery shippers.

Periodically throughout the year, when milk is not needed in the market for fluid use, it is kept at the supply plant in the country for manufacturing purposes. This practice should be encouraged since it is economically more feasible to meet the needs of the market for fluid purposes from those farms or plants nearest the market before bringing in milk from the more distant supply plants. The value of milk to the market for fluid purposes is greater at the location of a plant in the marketing area which packages it for distribution than at a country plant in the production area from which milk must be moved to the city plant for processing and packaging. Recognition in the order, through the medium of a location differential, should be given to this difference in value.

So as to be equitable to all handlers, the minimum Class I price to be paid for producer milk should not be dependent upon the type of plant receiving the milk. However, to the extent that milk is received elsewhere from producers and brought to the marketing area by a handler, the handler has assumed a transportation cost which might otherwise be borne by producers. Accordingly, the Class I price should be adjusted downward in the case of a plant which assumes the cost of hauling milk to the marketing area.

Producers proposed that the Class I price at a pool plant be reduced 2.5 cents for each 15 miles or fraction thereof that such plant is more than 40 miles from the city hall of Rock Island, Illinois. This rate is somewhat below the actual cost of hauling milk by tank truck. Testimony at the hearing indicated a cost of 14 cents per hundredweight for hauling milk in a 35,000 pound capacity tanker the 62 miles from Mt. Carroll to Rock Island. A rate of 12 cents per hundredweight was paid for moving milk in a 21,500 pound tanker over the 60 mile route from Manlius, to Rock Island. The rate charged for a haul of 60 miles by the Dairyland Transport Corporation, Springfield, Missouri, a company specializing in hauling milk and milk products in tank trucks, is 13 cents per hundredweight.

The various supply plants now associated with the Quad Cities market are in some instances located much nearer to other markets. The plant at Coggon, Iowa, for example, which is about 95 miles from Rock Island, is less than 25 miles from Cedar Rapids. It was emphasized at the hearing that the location differential should not be established at so high a rate that milk from these plants, which are now under the order, would be lost to other markets.

Producers admitted that the location differential proposed would not generally cover the full cost of bringing milk into the market. In justification of this, they stated that too large an adjustment would affect adversely returns to producers delivering to the supply plants in relation to the price in adjoining markets.

It is customary in both regulated and unregulated markets for handlers to pay producers delivering milk to country receiving stations a lesser price per hundredweight than is paid producers delivering directly to bottling plants. To the extent that this represents a lower price because of the location of the milk, such difference in value should be recognized under the order. It is concluded, therefore, that the Class I price should be reduced by 10 cents for the first 65 miles and by 1.5 cents for each additional 10 miles or fraction thereof with respect to producer milk received at a plant which is not less than 50 miles from a central place in the primary center of consumption in the marketing area. Rock Island, Illinois, is such a place in the Quad Cities marketing area.

The location differential herein recommended is economically sound and will be equitable to all handlers wherever located. The proposed rates are representative of the cost of hauling milk by an efficient means to the market.

Prices paid producers supplying plants to which location differentials apply should be reduced to reflect the lower value of such milk f. o. b. the point to which delivered.

No adjustment should be made in the Class II price because of the location of the plant to which the milk is delivered. There is little difference in the value of milk for manufactured uses associated with the location of the plant receiving the milk. This is true because of the low cost per hundredweight of milk involved in transporting manufactured products. The prices paid for ungraded milk received at various sections of the milkshed do not indicate any difference in value associated with location.

After a handler receives milk for Class II use, he should be expected to handle and dispose of the milk in the most advantageous possible manner. Prices paid producers for such milk should not be made dependent upon the method employed by the handler in disposing of such milk. To do otherwise would remove part of the incentive for keeping handling costs at a minimum. To insure that milk will not be moved unnecessarily at the expense of producers under the marketwide pool, the order should contain a provision to determine whether milk transferred between plants may receive the location differential credit. This should provide that any milk transferred be assigned to any Class II use remaining in the transferee plant after a maximum assignment of 5 percent of the direct producer receipts to Class II milk at such plant.

8. The order should provide that payments be made into the producer settlement fund with respect to milk not priced under the order which is allocated to Class I milk in a pool plant.

Receipts of milk in excess of actual Class I disposition is necessary to operate a fluid milk business. Because of seasonal fluctuations in production not matched by seasonal changes in consumption, this excess is particularly large in certain months of the year. Such excess or reserve milk is surplus to the fluid operation, and can be marketed only in manufactured form in competition with products made from ungraded milk. Thus, such reserve milk yields a considerably lower return than is necessary to sustain graded milk production for the Quad Cities market. Likewise, it yields a lower price than would be necessary to purchase graded milk on a regular basis in other supply areas and pay the cost of transportation to the marketing area.

The existence of this reserve Grade A milk, which must be marketed at a lower price, is the primary cause of the instability which may affect all fluid milk markets. If a handler is able to use milk he purchases at Class II prices for Class I use, he stands to gain advantage, but in so doing he demoralizes the Class I market price.

An important function of the order is to insure that the position of handlers paying producers a Class I price for fluid milk will not be undermined by other handlers using the market's excess or surplus producer milk for Class I use. It is equally important that the Class I market be protected from the use of seasonal or other excess milk from other markets as well as from its own surplus. If the order failed to provide such protection, a handler could curtail purchases of producer milk to his own advantage and secure low cost reserve supplies from other markets for Class I use.

Seasonal supplies are easily and cheaply acquired during the months of flush production when most markets are receiving milk greatly in excess of their current fluid needs. If adjacent milksheds dispose of seasonal surplus in each other's Class I markets, the result will soon be market chaos, particularly in the spring months. Class I prices would be demoralized and the rate of milk production for both markets on a permanent basis would be seriously impaired. Such marketing conditions would be contrary to the stated purpose of the act. It is necessary, therefore, in order to insure the effectiveness of the classified pricing program and to promote orderly marketing, that some measure be taken to remove the incentive which handlers have to acquire unpriced milk and undermine the Class I pricing structure.

One possible alternative would be to extend price regulation in accordance with order provisions to all milk plants which supply milk either directly or indirectly to the Quad Cities market. This alternative is both economically and ad-

ministratively unacceptable within the framework of the order. It would open the market pool to anyone who supplied merely a token quantity of milk to a plant serving the marketing area. The objections to such distribution of pooled funds was discussed earlier in the decision in connection with the recommendations for standards of pool participation.

Such regulation would have the further disadvantage of being cumbersome, expensive, difficult to enforce, and it would interfere with the acquisition of needed supplemental milk supplies for the market. It would not be possible or desirable to limit the number of plants or area from which milk might be purchased. However, in order to bring such plants under regulation, it would be necessary to establish individually tailored transfer and allocation rules according to the various plant locations, markets and supplies. Milk would have to be accounted for in its disposition from these plants to its various destinations and uses to determine classification. Also, it would be necessary to ascertain sources of supply other than receipts directly from farmers and determine what priority should be given such supplies in the allocation of Class I milk. In the case of a plant which made an incidental shipment of milk, perhaps at the end of the month, or in the case of such items as storage cream, additional complications would be involved. Earlier inventories as well as sales would have to be ascertained and classified. Classification might depend upon transactions made in the past concerning which adequate records were not kept. Producer prices would be fixed for milk already purchased and sold. Required record keeping and auditing problems would be greatly multiplied with such regulation.

It is concluded that it is not feasible to price all milk which may enter the market and that provision is necessary in the order which will insure against the displacement of producer milk by such unpriced milk for the purpose of cost advantage. There is no choice as to what type of provision can be used for this purpose. The only alternative available under the order is to levy a charge against unpriced milk used in Class I to whatever extent is necessary to remove the advantage there may be in using such milk instead of priced milk from producers.

Several problems are involved in formulating the provisions for any charge or payment designed to bring about the removal of the advantage of using unregulated milk. The rate of payment for this purpose must not be so low that it will permit a handler to have temporary or permanent advantage through sale of unpriced milk as Class I in the marketing area. It should not be so high that it will penalize suppliers of unpriced milk who offer milk needed by the market and who are not in a position of gaining an unfair advantage by such sale of milk. The payment must be provided for in a manner which is administratively feasible and which does not bring about unjustified administrative inconvenience or expense.

One method of setting the rate of payment would be to ascertain the actual cost to the regulated handler of milk which he purchases from unregulated plants and charge as a compensation payment any amount by which the Class I price exceeded the cost of the unregulated milk used in Class I. Such a scheme is not sound from the standpoint of administrative feasibility and it would not necessarily remove the advantage in using unregulated milk even though it were feasible. Rates at which milk sales are billed may not represent actual cost to the purchaser. In the case of a firm which owns or controls pool plants under the proposed order as well as unregulated plants, the rate of payment from one plant to another, if any were made, would have little or no significance.

If such a provision were to be adopted, the billing rate might be deliberately set in each instance at a level which would avoid any payments without regard to the value of the milk. Thus, the intended effect of this provision might be circumvented by merely adjusting the bookkeeping procedure.

A handler having no unregulated plants would no doubt find it possible to arrange a billing price on purchased milk which would avoid any compensatory payments. If a handler had the choice of paying money to the market-wide pool or to a person from whom he was buying milk, he would probably choose the latter. A kick-back arrangement or offsetting purchase and sale might readily be arranged, perhaps through a third party. Since the billing price for milk would be self-serving figure for both parties to the transaction, it would be virtually impossible to ascertain that it represented the true cost to the purchaser.

If the stated purchase price were a true cost, it would still not fulfill the purpose of removing the advantage to unregulated milk to base compensation payments on the difference between such price and the Class I price. Sales of priced milk between regulated handlers ordinarily take place at the class price plus a handling charge. This handling charge varies according to circumstances, but represents a payment to the receiver of the milk to offset his purchasing and receiving costs, such as dumping, weighing, testing, and cooling the milk, paying producers, and other costs of doing business. The cost of receiving the milk in bulk form is somewhat less than receiving it from producers. Thus, in order to remove the advantage to unregulated milk, it would be necessary to provide that the cost of bulk unregulated milk be somewhat more than the Class I price. It would be exceedingly difficult to determine what this rate should be, particularly in the case of products such as condensed skim milk and cream, where the allocation of additional processing costs among more than one end product is involved. This scheme for removing the advantage in using unregulated milk is rejected for these reasons.

Another suggested method is to determine the price actually paid dairy farmers by the unregulated milk dealer who first received the milk, and base the compensation payment thereon. This method has several shortcomings. The various payment plans which are used in paying farmers for milk would make the determination of pay rates to individual farmers an exceedingly difficult task. For example, unregulated milk dealers may use varying rates of butterfat differentials, different types of base rating plans, or payments based on volume of deliveries. Various devices such as these for paying farmers often make it impossible to determine actual rate of payment per hundredweight of milk. In this case as with bulk milk purchases stated prices are often illusory. The cost of the milk itself may be modified by unrealistic charges for various items of supplies and services. A milk dealer affected by such a provision might increase his producer price and increase hauling rates an offsetting amount. Whatever payment plan an unregulated milk dealer may use is a matter of his own choice and it can be changed readily. Pricing or paying arrangements he may have with farmers are not subject to regulation. Calculation of compensation payments according to this suggestion would give any affected dealer special incentive to resort to these special payment plans suggested here or others he might devise for purposes of evading payments.

The further problem of establishing the rate of payment to be required would in itself preclude use of the actual cost of the milk purchased from farmers by unregulated handlers as a basis for calculating the payment to be required. If a payment were to be required on the unregulated milk based on the difference between prices paid farmers and some other price, the unregulated handler could avoid payments by increasing his prices to farmers. This would give an unregulated handler the advantage over regulated handlers in that a regulated handler has no choice as to what he is required to pay producers nor how this money is to be distributed. Likewise, it would enable unregulated suppliers to dispose of Class I milk in the marketing area with no obligation to equalize such sales with other suppliers of the market.

Even though the rate of payment to producers for all milk might be known, it would still be impossible to ascertain the rate of payment on that portion of the milk disposed of in the marketing area. Since milk marketed outside the marketing area would represent most of the total supply in the unregulated plant, it would be necessary to determine payment for milk marketed to the various outlets. When handlers have both surplus as well as Class I milk in their plants, it is not realistic to assume that the purchase price for milk for each use is the same.

It has been suggested that in order to overcome this objection the plant of the unregulated handler be subject to audit and that the rate of compensation payment be based on the difference between the average utilization value at order prices in the unregulated plant and the average rate of payment to producers.

This method would not remove the entire advantage of selling surplus milk as Class I in the marketing area. This method has not only the disadvantages associated with other schemes which assume the determination of actual pay rates to producers, but it would involve, in the case of the Quad Cities market, an extremely complicated and administratively impractical system of accounting and determination in such plants. The unregulated plants which are potential sources of supply of supplemental milk and milk products are numerous and widely scattered. Determination of utilization value in these plants would involve the same complications and administrative expense and difficulties as discussed earlier which would be involved in complete regulation of such plants. To make the detailed accounting necessary to establish classification, such unregulated dealers would need to maintain the same detailed records as wholly regulated handlers.

An alternative method for determining the rate of compensation payments would be to base the rate of payment on the difference between blend prices prevailing in an area and the Class I price. This method has been suggested because it is assumed that unregulated handlers will be forced by competition to pay farmers approximately average blend prices. While this approach eliminates the need for attempting to determine actual pay rates, it could not be used without modification and still prevent the displacement of regulated milk with surplus milk from other markets at all times throughout the year. Unregulated plants, as well as regulated plants, may have some surplus milk at all times and particularly during the seasons of flush production. As a result, prices paid farmers are, in fact, blend prices made up of returns from the sale of milk in Class I outlets, as well as sales to the surplus market. If an unregulated plant were in a position to sell its surplus milk for Class I use in the marketing area and maintain its regular Class I outlets, it would have a competitive advantage over regulated handlers who found it necessary to dispose of part of their milk as surplus.

None of these suggestions presents an acceptable approach to the problem of compensation payments to be applied to other source milk allocated to Class I in pool plants. It is necessary, therefore, to resort to a different procedure. The only sound method of dealing with this problem is one based on a recognition of the economics involved as they affect producers and handlers. This approach resolves itself primarily into a question of market values of milk.

Fully regulated handlers under the order seeking to purchase unregulated milk will naturally resort to the lowest cost source from which suitable milk is available. In fixing the rate of compensation payment, it is necessary, therefore, to determine what the lowest cost source may be and to base the payment on the difference between the cost of such milk and the cost of milk priced under the order for similar use. Milk supplies are larger in spring and summer than in fall and winter, and because of relatively constant sales of fluid milk, the excess increased production must be marketed largely as manufactured products. This outlet represents the opportunity cost of the surplus milk since it is the highest price at which the milk can otherwise be sold. It is this opportunity cost or value of such milk which would be effective in determining the price at which the unregulated plant would sell such milk.

Since considerable volumes of Grade A milk must be disposed of as surplus by various unregulated plants from which the Quad Cities market may obtain milk, it is evident that handlers under the order could obtain such milk at prices reflecting its value as surplus milk. In short, the actual value of seasonal or reserve milk is not the blend price paid to dairy farmers but rather the price which can be obtained for it in the market when disposed of as surplus milk.

Therefore, for the months of December through June, during which period surplus milk may be available in substantial volumes to the Quad Cities market from nonpool sources, the compensation payment on the receipts of other source fluid milk products which are allocated to Class I milk should be based on the difference between the minimum price of producer milk used for surplus and the applicable Class I price under the Quad Cities order. The Class II price established by the order is a fair and economic measure of the value of milk in surplus uses in the Quad Cities area.

During the months of July through November the milk supplies for the Quad Cities market tend to be shorter than in other months of the year. It is not likely that other source fluid milk products will be available to the market at surplus prices. The compensation payment during these months should be the difference between the marketing area uniform price to producers and the Class I price adjusted to the location of the plant from which such fluid milk products are supplied. The relationship between the supply of milk and the demand for milk in the Quad Cities market during the July through November period tends to fluctuate from year to year according to marketing conditions. These conditions will generally prevail also in surrounding markets which are potential sources of supply for unpriced milk. Thus, the rate of compensation payment based on the difference between Class I and uniform prices will adjust itself automatically in these months according to the changes in the demand for and the price of outside supplies. If supplies of producer milk are relatively plentiful, unpriced milk can be expected to be cheaper. Therefore, in order to equalize costs of milk the rate of compensation payment should be somewhat higher. On the other hand, as milk supplies in the area tend to be shorter, it is to be expected that the cost of unregulated milk will increase. Under these circumstances, the rate of compensation payment will be correspondingly less.

In some instances there will be no and in all cases insignificant transportation charges per hundredweight experienced by handlers on other source milk used in the form of concentrated milk products under the skim milk equivalent basis of accounting provided for in the order. For this reason, other source milk from such products should be considered to be from a source at the location of the pool plant where it is used. In other words, the compensation payment on such other source milk derived from concentrated products, such as condensed milk or nonfat dry milk solids, which is allocated to Class I milk will be equal to the difference between the market area Class I price and the corresponding uniform blend price or Class II price, as the case may be. By following this procedure, other source milk derived from Grade A manufactured products which may be made from producer milk in handlers' plants or purchased from outside sources will be subject to identical reclassification charges. This will remove to the greatest extent that it is administratively possible, any advantage there may be utilizing the products from unregulated sources for producer milk.

By choosing a rate of compensation payment which reflects the cost of the cheapest other source milk which may be expected to be available to regulated handlers, any advantage to one handler relative to the others in obtaining such cheap milk and substituting it for producer milk in Class I, is removed insofar as is administratively possible. No handler is given the clear opportunity to gain an unfair advantage over his competitors which otherwise would exist. However, if other source milk is to be purchased, the incentive for purchasing the cheapest of such milk remains, because the lower the price which a handler pays for other source milk, the lower will be his total cost of purchasing such milk. This follows from the fact that the measure of the compensation payment is an objective one and does not depend upon the particular price which the handler paid for the other source milk.

As indicated elsewhere in this decision, the process of marketwide pooling creates special incentive for milk to come into the market to gain certain advantages. Such milk would not be associated with the market in the absence of regulation.

The act requires that prices fixed under the order for milk purchased from producers or associations of producers be uniform as to all handlers, subject only to usual adjustments, such as those for butterfat content and location of the milk. The only prices fixed under the order are those for producer milk, and it is hereby determined that they are uniform as required by the act. Class prices for pool milk under the order are for raw milk as received from farmers, f. o. b. the loading platform at the plant where first received.

In calculating the payments on other source milk the Class I price must relate to and be fixed as of the point where the milk is received from farmers at the first receiving plant, so as to be properly comparable with the minimum Class I price for producer milk at the level of marketing. No allowance should be

made for subsequent handling costs and profits in this farm level comparison between producer and other source milk because such costs and profits attach at stages of marketing subsequent to the basing point to which minimum Class I prices for producer milk refer. They are in no way regulated by the order with respect to producer milk. Neither the act nor the proposed order contemplates, authorizes or provides for the regulation of subsequent handling charges or profits or the establishment of uniform resale prices between handlers, whether the milk be from producers or other sources.

The compensation payments herein provided are not only incidental, but necessary to sustain the classification and pricing of milk according to its use in the market. The rates of payment specified are those which are necessary and appropriate to accomplish this purpose.

The rate of payment recommended will tend to remove the competitive advantage for unpriced milk, and will avoid displacement of producer milk for reasons of cost. However, if experience proves that milk is available to handlers in the future at prices different than those now indicated, or that such payments otherwise interfere with the purposes of the order, then it will be necessary to reconsider the rate of compensation payment on the basis of that experience.

In addition to that other source milk which would enter the marketing area through pool plants, some nonpool milk may be distributed within the marketing area from nonpool plants. It would not be possible to stabilize the market under the classified pricing program if distribution in the marketing area of unpriced milk from nonpool plants without compensation payments were allowed. Such milk should be classified and priced the same as unpriced milk distributed through any other channels.

Handlers distributing such unpriced milk in the marketing area from nonpool distributing plants have the same opportunity to buy milk at the opportunity cost level as do the operators of pool plants who purchase other source milk. Such milk may be purchased and distributed in the marketing area. In addition, however, the operator of the nonpool plant in all probability has surplus milk in his own plant which he would want to dispose of on any basis which would yield a higher return than the surplus value. It would be particularly easy to dispose of such milk for Class I use in the marketing area by supplying contract business such as hospitals and defense establishments. With surplus outlets as the alternative, and no compensation payments to make, the nonpool handlers would have considerable incentive or margin to underbid the seller of priced milk for such sales. A nonpool plant might also use such price advantage in selling his surplus milk to Class I outlets for the purpose of establishing a regular trade on retail or wholesale routes to homes and stores in the marketing area. The nonpool plant might sell up to 15 percent of its milk into the marketing area as Class I without becoming subject to regulation. To allow a nonpool plant to use its surplus milk in this manner for establishing a regular trade in the marketing area without compensation payments would mean that such plant would have a marked competitive advantage over regulated handlers selling priced milk. Such conditions could readily lead to disorderly marketing conditions.

It is considered inappropriate also to subject a plant to full regulation if only a small share of its milk is sold in the marketing area. Such regulation might place a plant of this kind at a distinct disadvantage in relation to its unregulated competition. In some cases, a nonpool plant may be disposing of a larger share of its milk as Class I than the average utilization for the market. In such cases, the compensation payments herein provided might cost the handler less than the equalization payments such plant would pay into the marketwide pool if fully regulated as a pool plant. In these instances, the sale of small quantities of milk in the marketing area would be more likely to take place under the compensation payment provisions herein provided than if full regulation were extended to all plants.

The rate of compensation payment provided for nonpool plants making distribution directly in the marketing area, therefore, should be the same as that for pool plants which obtain and use unpriced milk in Class I. Moreover, the administrative feasibility of any other method of levying compensation payments is substantially the same as that described in the case of unpriced milk distributed in the marketing area by pool plants.

Any funds collected in the form of compensatory payments should be added to the producer-settlement fund. It is the purpose of the order to insure that a sufficient and dependable supply of quality milk be available for Class I needs of the market. To the extent that Class I sales are displaced through the disposition of surplus milk from unpriced sources, producers stand to lose income from the sale of milk to the market which they are expected to supply. This loss of income would mean that the prices contemplated under the order would not be realized by producers. As a result, production might suffer, in which case consumers would stand to lose because of the disappearance of milk supplies from the regular and dependable sources which have provided milk to the market on a year-round basis. Otherwise, Class I prices would have to be increased to offset the loss of income to producers. There is no alternative source of dependable milk supplies which would cost consumers less over a period of time than the milk supplied by the regular producers. Thus, there is justification in terms of overall benefit to the market for returning to producers the difference between the value of such milk at its opportunity cost, which would otherwise be its value to the seller, and the Class I price. There is no alternative disposition of funds from compensation payments under the authority of the act other than that herein provided.

It is necessary that the order specify the handler who is obligated to make the compensation payments. If the unpriced milk is distributed in the marketing area from a nonpool plant, the operator of such plant should make the payment. In the case of supplemental milk received at pool plants from unpriced sources, either the buying or selling plant might be assessed. From the standpoint of the economics involved, it would make no difference, since the amount of payment would be the same in both cases.

From the standpoint of administration and enforcement, it would be much easier and simpler for the regulated plant to make the payment. The market administrator has regular dealings with the pool plant handler. Such handler would be expected to know and understand the terms and provisions of the order. He is the handler who assumes the responsibility for distributing the milk in the regulated market. Whether or not a compensation payment would be required would depend upon the application of the allocation provisions of the order to the pool plant of the receiving handler.

The seller, on the other hand, would not be aware until later whether a compensation payment would be required, and might not even know at the time of the sale, particularly if the sale took place through a broker, whether or not his milk would be moved to a regulated market for disposition. If enforcement proceedings were to be required, it would be more convenient and logical to bring the case to court in the area of the regulated market where the problem arose.

The compensation payments herein provided will not prohibit the marketing of milk nor limit the marketing of milk products from any production area of the United States. The rate of payment required would be uniform for all plants similarly situated with respect to their location in relation to the marketing area.

The quantity of milk and milk products which may be sold in any regulated market is dependent at least to some extent upon the price fixed under the order for the particular class of utilization. Such influence should not be construed, however, as a limitation of the type precluded under the act. No price can be fixed without influencing, to some extent, the quantity of milk and milk products which may be sold from either regulated or unregulated sources. No quantitative limitations are imposed in the proposed order on the amounts of unpriced milk which may be disposed of in the marketing area nor does it prohibit such use or any other use of unpriced nonpool milk or milk products. The compensation payment herewith provided will not discriminate against producers by areas, but will provide for equalization of competitive prices by type of transaction with respect to regulated and unregulated milk.

The payment will not deprive suppliers of unpriced milk of a high priced market which they would otherwise enjoy. The alternative sale value of the unpriced milk is recognized, and this value is returned to these sources when sale is made to the Quad Cities market. If marketing facilities and outlets are such that it is

advantageous for nonpool plants to dispose of their surplus milk in the Quad Cities Class I market, under the provisions of the attached order, they may be expected to and undoubtedly will do so, and the returns they receive should be the full surplus value for such milk.

The compensation payment herewith provided has as its primary purpose the elimination of economic incentives for handlers to use unpriced milk to displace minimum priced milk in Class I sales. The rate of payment found to be appropriate for this purpose is one which recognizes general competitive conditions in the purchase and sale of regulated and unregulated milk. It is recognized, however, that general competitive conditions do not prevail in all cases. Each handler is situated differently and each individual transaction is made under different circumstances. It is not possible, however, to adjust prices or payments to individual circumstances or transactions. Such an individual approach would not be administratively or economically feasible. Compensatory payments must therefore be applied at a definite and specified rate applicable to all handlers similary situated. No single rate of payment can be determined, however, which would result in complete equality of cost to all handlers. Consequently, instances will undoubtedly arise which will appear to indicate that the objectives of the compensatory payments are not being achieved in particular cases. In some cases, the payments required may seam harsh.

It is necessary in seeking an overall solution to problems of this nature to adopt provisions which will be reasonable and as liberal as possible, and at the same time will still guarantee the integrity of regulation. To provide inadequate payments would leave the door open to practices which would render the program ineffective. Commerce in milk is entirely at the option of handlers. They are free to complete only those transactions which are most favorable to themselves. Order provisions must recognize this fact. They must recognize, also, that the varying conditions under which milk transactions occur give rise to great complexity and some doubtful circumstances. Where marginal problems arise, they must be resolved in favor of maintaining the integrity under the order, otherwise the advantage may go to unregulated milk with consequent disadvantage to the handlers and producers of regulated milk.

9. The requirement for a compensatory payment on Class I milk disposed on a route in the marketing area by a handler regulated under another Federal order should be discontinued. The payment on such milk is now required when the Class I price under this order is above that of the other Federal order and is made to the producer-settlement fund at the rate of the difference between this order's Class I price and the Class I price under the other Federal order.

In proposing that this provision be deleted from the order proponents contended that if milk is properly priced under the provisions of a Federal order, the addition of transportation costs from the supplying market to the other market equalizes the cost to a point where the receiving handler pays a price that is at least equal to that paid for locally produced milk.

The provision for compensatory payments on other Federal order milk distributed in the marketing area is not needed under current marketing conditions in the Quad Cities market. Provisions, herein recommended, regarding pool plant qualifications and compensatory payments on unpriced milk disposed of in the marketing area, adequately provide an equitable basis for pricing milk at plants regularly associated with the market and those which may make irregular shipments to, or be only incidentally associated with, the market by reason of having a relatively negligible portion of their distribution business in the marketing area.

There is no indication that the relationship of the level of the Class I prices between that in the Quad Cities and other nearby Federally regulated markets is such as to offer handlers under the other orders either an unnatural incentive for the distribution of milk in the Quad Cities market or an advantage over Quad Cities order handlers on such distribution.

In establishing Class I prices in the Quad Cities order consideration is given to the Class I prices in other Federal order markets. This is necessary since Quad Cities handlers compete in various communities outside the marketing area with such handlers. To continue the provision for assessing handlers under other Federal orders for milk sold in the Quad Cities market could give Quad Cities order handlers a significant price advantage over such competitors, which competitors are required to pay prices comparable to that under the Quad Cities order by the orders which regulate them.

10. A proposal was made at the hearing which would permit producer milk to move from a pool plant to a nonpool plant to be packaged and then be returned to the pool plant without, in effect, being considered as having been handled at the nonpool plant.

The purpose of the proposal, described by proponents as custom-bottling, is to allow such handling of milk without its being considered as a receipt of other source milk from a nonpool plant. It was argued that some pool plants in the market are not large enough to support the expensive machines which are needed to package milk in the various sized paper containers and it would be more practicable for them to obtain such packaged milk from nearby nonpool plants.

There is no problem in the market at the present time which the provision to accommodate custom-bottling at a nonpool plant is proposed to remedy. No milk is now being custom-bottled at a nonpool plant for the account of a pool plant under the Quad Cities order. It was not indicated that the proponent handler or any other pool plant operator contemplates such an arrangement in the near future.

Elsewheres in this decision provision is made for discontinuance of the compensatory payment charge on Class I milk disposed on a route in the marketing area by a handler regulated by another Federal order. Also, the provision herein proposed relative to payments on unpriced milk received at a pool plant would not be applicable to milk classified and priced as Class I milk under another Federal milk marketing order.

If there should be any need for a Quad Cities order handler to have milk packaged outside the marketing area, availability of plants under other orders, which are relatively nearby, affords ample opportunity to meet this need. At such plants it would not be impracticable, within the framework of the attached proposed order, to custom-bottle for handlers regulated by the Quad Cities order.

As indicated at the hearing, the custom-bottling proposal was not addressed to any existing market problem and is, admittedly, directed at liberalizing the provisions of the order for situations which may arise in the future. Accordingly, the data submitted at the hearing in connection with the proposal were speculative and, necessarily, incomplete.

In view of the above stated considerations, the proposal to modify the provisions of the order with respect to the movement of milk to an unregulated plant for custom-bottling is hereby denied.

11. The proposal to provide for a base and excess plan for distributing returns to producers was abandoned at the hearing. Instead, producers proposed a fall incentive payment plan (sometimes referred to as "Louisville plan") for distributing returns to producers. As proposed, the Market Administrator would withhold a specified percentage of the value of pooled milk during the spring months of heavy production for distribution to producers during the fall months of low production.

In connection with their proposal for the fall incentive payment plan, producers proposed that the Class I price, which is now adjusted seasonably by varying the Class I differential monthly be superseded by a Class I price which would be fixed throughout the year at the level obtained by using the seasonally higher Class I differential now in the order. Elsewhere in this decision provision is made for continuing to adjust the Class I price seasonally. Since the fall incentive payment plan, as proposed, is predicated on replacing the seasonally adjusted Class I price with a constant Class I differential throughout the year, it would not be practicable to give consideration to providing for a fall incentive payment plan at this time. Accordingly, the proposal to provide for such a plan within the framework of the order is hereby denied.

12. Producers proposed that a handler making payment to a producer at more than the uniform price should make such an additional payment uniformly to all producers.

The Quad Cities order fixes minimum prices which handlers shall pay for milk received from producers. In some in-

stances, handlers pay producers premiums for milk received on bulk tank pickup routes and for milk sold as a special milk such as Guernsey or kosher milk. The order does not in any way restrict producers from bargaining with handlers for such premiums or for any other premiums above order prices.

It was not shown what benefit, if any, would acrue to the market by specifying in the order the conditions under which or the manner in which premiums should be paid to producers. Moreover, there was no evidence that there are currently any abuses of the order which would be corrected by the proposal. Accordingly, the proposal is hereby denied.

13. The entire order should be redrafted to incorporate therein conforming and clarifying changes made necessary by the amendments recommended in this decision.

(a) In connection with the proposed changes designating which persons would be subject to regulation and application of order provisions to them, new or revised definitions are provided in the attached order, including those for: "fluid milk product", "producer milk", "other source milk", "nonpool plant", "handler", and "Chicago butter price". The definitions for "producer", "pool plant", distributing plant", and "supply plant" are discussed elsewhere in this decision.

"Fluid milk product" would mean milk, skim milk, buttermilk, milk drinks (plain or flavored) cream or any mixture in fluid form of skim milk and cream (except aerated cream products, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). The items defined as fluid milk products pursuant to this definition are those products which when disposed of by handlers are considered as Class I milk.

"Producer milk" would mean only that skim milk and butterfat contained in milk received at a pool plant directly from producers or diverted from a pool plant to a nonpool plant in accordance with the conditions prescribed in a producer definition (Issue No. 3).

"Other source milk" would be defined as all skim milk and butterfat contained in fluid milk products utilized by the handler in his operations except milk received from producers, fluid milk products received from other plants, and inventory at the beginning of the month. Thus, other source milk would represent skim milk and butterfat which may not be subject to the pricing provisions of this order. It would include all milk products from plants other than pool plants and all manufactured dairy products from any source which are reprocessed or converted into another product during the month. It would include those manufactured products from a plant's own production which are made and are reprocessed or converted into another product during the same or a later month.

"Nonpool plant" would mean any milk manufacturing, processing, or bottling plant other than a pool plant.

"Handler" would be defined as any person in his capacity as the operator of one or more distributing or supply plants. The definition would also include a cooperative association in its capacity as the operator of a pool plant or with respect to milk from producers diverted for its account from a pool plant to a nonpool plant.

"Chicago butter price" would represent the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

(b) Reference in the order with respect to the accounting and classification of "emergency milk" should be deleted. In the attached proposed order provision is made in a comprehensive manner for the accounting and classification of all unpriced milk, including that heretofore defined as emergency milk. In view of this, no useful purpose would be served by continuing any reference in the order to emergency milk.

(c) As now provided in the order, a handler receiving milk from producers who are members of a cooperative association which operates a pool plant is required to make payment to the cooperative for such milk at the applicable class prices, and the classification of such milk is deemed to be the same as all other producer milk at the handler's plant. A cooperative association which does not operate a pool plant and which is authorized to collect for its members' milk may collect for producer milk delivered to a pool plant at the uniform price value of such milk.

In connection with the provision for compensatory payments on unpriced milk, which is recommended in this decision, it is determined that the handler of such unpriced milk shall be responsible for remitting such payments to the market administrator. With regard to the provisions herein recommended for basing pool plant status on standards of association with the market, it is possible for a plant to qualify as a pool plant in one month and not in another. In a month when such plant did not qualify as a pool plant, the operator of such plant would be subject to a compensatory payment on the unpriced milk which was delivered in the marketing area from his plant.

It would not be administratively feasible for the market administrator to bill a cooperative association for a compensatory payment charge on unpriced milk due the producer-settlement fund from a handler because it supplies such handler with producer milk. Neither would it be feasible under the Quad Cities order to have a cooperative association collect at the class prices for milk delivered by its producer members to a pool plant, participate in the producer-settlement fund for such milk, and have the operator of the pool plant deal separately with the producer-settlement fund with respect to payments due on unpriced milk. A handler, whose plant did not qualify as a pool plant in any month because of a minimum specified percentage of its receipts from dairy farmers not having been distributed in the marketing area, would be required to make payment directly to the producer-settlement fund on the quantity of Class I milk distributed in the marketing area. This would be required whether or not he customarily paid a cooperative association for milk received from dairy farmers. If the plant of such handler became a pool plant in some months, it would be more practicable and administratively more feasible to have him participate in the producer-settlement fund directly instead of through a cooperative association. It is the operator of a plant who is primarily responsible for any payments on unpriced milk or on other milk which may be due the producer-settlement fund.

In the interest of orderly marketing, it is desirable that a cooperative association be free to market and collect for the milk of its members to the fullest extent that it is so authorized by its members. The effectiveness of a cooperative under the Quad Cities order in marketing the milk of its members would not be impeded whether payment to such cooperative by a handler is at the uniform price or at the class prices in the order.

In view of the considerations stated above, it is concluded that the best interest of the market would be served by holding a handler responsible for dealing with the producer-settlement fund with respect to all milk received at his plant directly from producers and from other sources.

Rulings on proposed findings and conclusions. Briefs were filed which contained statements of fact, proposed findings and conclusions, and arguments with respect to the provisions of the proposed amendments. Every point covered by the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in the recommended decision.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and com-

mercial activity specified in a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order, amending the order, as amended. The following order regulating the handling of milk in the Quad Cities marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the proposed amended order.

DEFINITIONS

§ 944.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 944.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 944.3 *Department.* "Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 944.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 944.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 944.6 *Quad Cities marketing area.* "Quad Cities marketing area", hereinafter called the "marketing area", means the territory lying within the boundaries of the corporate limits of the City of Clinton, Iowa, and that part of Camanche Township, including the City of Camanche, lying east of sections 2, 11, 14, 23, 26, and 35 all in Clinton County, Iowa; the territory lying within the corporate limits of the cities of Davenport and Bettendorf, Iowa; and Rock Island, Moline, East Moline and Silvis, Illinois; together with the territory lying within the following townships: Davenport, Rockingham, and Pleasant Valley in Scott County, Iowa; and South Moline, Moline, Blackhawk, Coal Valley, Hampton, and South Rock Island in Rock Island County, Illinois.

§ 944.7 *Producer.* "Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of April through June, and (2) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March: *Provided,* That milk diverted pursuant to this section shall be deemed to have been received at the location of the plant from which diverted.

§ 944.8 *Distributing plant.* "Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 944.9 *Supply plant.* "Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipping during the month to a pool plant qualified pursuant to § 944.10 (a).

§ 944.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A plant which is owned and operated by a cooperative association and which is located in the marketing area.

§ 944.11 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 944.12 *Handler.* "Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) A cooperative association which is the operator of a pool plant pursuant to § 944.10 (c).

(c) Any cooperative association with respect to the milk from producers diverted by the association for the account of such association from a pool plant to a nonpool plant.

§ 944.13 *Producer-handler.* "Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

§ 944.14 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 944.7.

§ 944.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream or any mixture in fluid form of skim milk and cream (except aerated cream products, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 944.16 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, (2) producer milk, or (3) inventory at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 944.17 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery buttery at Chicago as reported during the month by the Department.

MARKETING ADMINISTRATOR

§ 944.20 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 944.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 944.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed

by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 944.87: (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 944.88, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties.

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who within 10 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 944.30 and 944.31, or payments pursuant to §§ 944.80, 944.84, 944.86, 944.87, and 944.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month, the minimum price for Class I milk pursuant to § 944.50 (a) and the Class I butterfat differential, pursuant to § 944.51 (a) both for the current month; and the minimum price for Class II milk, pursuant to § 944.50 (b), and the Class II butterfat differential, pursuant to § 944.51 (b) both for the preceding month; and

(2) The 10th day after the end of each month the uniform price pursuant to § 944.71 and the producer butterfat differential pursuant to § 944.81; and

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests the percentage of the milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 944.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 944.7;

(e) Inventories of fluid milk products on hand at the beginning and end of the month;

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area; and

(g) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 944.31 *Other reports.* Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 944.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations.

§ 944.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 944.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat which are required to be reported pursuant to § 944.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 944.41 through 944.46.

§ 944.41 *Classes of utilization.* Subject to the conditions set forth in § 944.44 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) of this section), and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of to wholesale bakeries, candy manufacturers, soup companies, or for livestock feed; (3) contained in inventory of fluid milk prducts on hand at the end of the month; (4) in shrinkage allocated to recepits of producer milk (except milk diverted to a nonpool plant pursuant to § 944.7) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively; and (5) in shrinkage of other source milk.

§ 944.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 944.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 944.44 *Transfers.* Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers

in their reports submitted for the month to the market administrator pursuant to § 944.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 944.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further,* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product; and

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant unless:

(1) The transferring or diverting handler claims classification in Class II milk in a written statement submitted to the market administrator by the operators of both the pool plant and the nonpool plant on or before the 7th day after the end of the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) An equivalent amount of skim milk and butterfat had been used at the nonpool plant during the month in the indicated utilization.

§ 944.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handlers: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 944.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 944.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 944.41 (b) (4);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 944.44 (a);

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 944.50 *Class prices.* Subject to the provisions of §§ 944.51 and 944.52 the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the price for Class I milk established under Federal Order No. 41, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, plus 20 cents.

(b) *Class II milk price.* The Class II milk price shall be the average of the basic or field prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the period from the 16th day of the preceding month through the 15th day of the current month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Present Operator and Plant Location

Amboy Milk Products Co., Amboy, Ill.
Borden Co., Dixon, Ill.
Borden Co., Sterling, Ill.
Carnation Co., Morrison, Ill.
Carnation Co., Oregon, Ill.
Carnation Co., Waverly, Iowa.
United Milk Products Co., Argo Fay, Ill.

§ 944.51 *Butterfat differentials to handlers.* For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 944.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.125.

(b) *Class II price.* Multiply the Chicago butter price for the current month by 0.110 for the months of April, May, and June, and by 0.115 for all other months.

§ 944.52 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 50 miles or more from the City Hall, Rock Island, Illinois, by the shortest hard surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 944.50 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Rock Island City Hall (miles):	*Rate per hundredweight (cents)*
50 but less than 65	10.0
For each additional 10 miles or fraction thereof additional	1.5

Provided, That for the purpose of calculating the location differential adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 944.46 (a) (5) and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable to each plant, beginning with the plant having the largest differential.

§ 944.53 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 944.60 *Producer-handler.* Sections 944.40 through 944.46, 944.50 through 944.52, 944.70, 944.71, and 944.80 through 944.88, shall not apply to a producer-handler.

§ 944.61 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant is qualified as a pool plant pursuant to § 944.10 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the Quad Cities marketing area than in the marketing area regulated pursuant to such other order: *Provided,* That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 944.30) and allow verification of such reports by the market administrator.

§ 944.62 *Handlers operating nonpool plants.* None of the provisions from §§ 944.44 through 944.52, inclusive, or from §§ 944.70 through 944.85, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 13th day after the end of each month pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 944.63.

§ 944.63 *Rate of payment on unpriced milk.* The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of December through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through November subtract from the Class I price f. o. b. such nonpool plant the uniform price to producers adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICE

§ 944.70 *Computation of value of milk for each handler.* The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 944.46 (a) (9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 944.46 (a) (8) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 944.46 (a) (2) and (3) and the corresponding step of (b) by the rate of payment on unpriced milk determined pursuant to § 944.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided,* That if the source of any such fluid milk product received at a pool plant is not clearly established, such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

§ 944.71 *Computation of uniform price.* For each of the months the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content f. o. b. pool plants located within 50 miles of the City Hall of Rock Island, Illinois, as follows:

(a) Combine into one total the values computed pursuant to § 944.70 for all handlers who made the reports prescribed in § 944.30 for such month, except those in default of payments required pursuant to § 944.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 944.82;

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included in these computations; and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price for producer milk.

PAYMENT FOR MILK

§ 944.80 *Time and method of payment for producer milk.* Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed in accordance with § 944.71, subject to the butterfat differential computed pursuant to § 944.81 and less location differential deductions pursuant to § 944.82.

(b) On or before the 12th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

§ 944.81 *Butterfat differentials to producers.* The applicable uniform prices to be paid each producer pursuant to § 944.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 944.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 944.82 *Location differentials to producers.* In making payment pursuant to § 944.80 the uniform price pursuant to § 944.71 for milk which is received from producers at a pool plant located 50 miles or more from the City Hall, Rock Island, Illinois, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Rock Island City Hall (miles):	*Rate per hundredweight (cents)*
50 but less than 65	10 0
For each additional 10 miles or fraction thereof an additional	1 5

§ 944.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 944.62, 944.84 and 944.86, and out of which he shall make all payments to handlers pursuant to §§ 944.85 and 944.86.

§ 944.84 *Payments to the producer-settlement fund.* On or before the 13th day after the end of each month, each handler shall pay to the market administrator the amount by which the value of milk for such handler pursuant to § 944.70 for such month exceeds the obligation pursuant to § 944.80 of such handler to producers for milk received during the month.

§ 944.85 *Payments out of the producer-settlement fund.* On or before the 15th day after the end of each month the market administrator shall pay to

each handler the amount by which the obligation, pursuant to § 944.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 944.70: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 944.80 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 944.86 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due; and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 944.87 *Expense of administration.* As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 944.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

§ 944.88 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 944.80, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 944.89 *Termination of obligations.* The provisions of this section shall apply to any obligation under this subpart for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (A) of the act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books and records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this subpart to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 944.90 *Effective time.* The provisions of this subpart, or any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 944.91 *Suspension or termination.* The Secretary shall, whenever he finds this subpart, or any provision hereof, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or any such provision of this subpart.

§ 944.92 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this subpart, there are any obligations hereunder the final accrual or ascertainment of which require further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 944.93 *Liquidation.* Upon the suspension or termination of the provisions of this subpart, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all accounts, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 944.100 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 944.101 *Separability of provisions.* If any provision of this subpart or its application to any person or circumstance, is held invalid, the application of such provision, and of the remaining provisions of this subpart, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 25th day of February 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 57-1527; Filed, Feb. 27, 1957; 8:57 a. m.]

[7 CFR Part 967]

[Docket No. AO-170-A10]

HANDLING OF MILK IN SOUTH BEND-LA PORTE, INDIANA, MARKETING AREA

NOTICE OF EXTENSION OF TIME FOR FILING EXCEPTIONS TO RECOMMENDED DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND AMENDED ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), notice is hereby given that the time for filing exceptions to the recommended decision with respect to a proposed amended order and marketing agreement regulating the handling of milk in the South Bend-La Porte, Indiana, marketing area, which was issued February 6, 1957 (22 F. R. 844), is hereby extended to March 1, 1957.

Dated: February 21, 1957.

[SEAL] ROY W. LENNARTSON, *Deputy Administrator.*

[F. R. Doc. 57-1486; Filed, Feb. 27, 1957; 8:46 a. m.]

[7 CFR Part 1014]

[AO-287]

TOMATOES GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937 as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreement and marketing orders (7 CFR Part 900), a public hearing was held at Edinburg, Texas on September 24-27, 1956, pursuant to notice thereof which was published in the FEDERAL REGISTER (21 F. R. 6612), upon proposed Marketing Agreement No. 124 and Order No. 114, regulating the handling of tomatoes grown in the Lower Rio Grande Valley in Texas.

On the basis of the evidence introduced at the aforesaid hearing and record thereof, the Acting Deputy Administrator, Agricultural Marketing Service on January 11, 1957, filed with the Hearing Clerk, United States Department of Agriculture the recommended decision in this proceeding. The notice of the filing of such recommended decision affording opportunity to file written exception thereto was published January 16, 1957, in the FEDERAL REGISTER (22 F. R. 301, 452).

Rulings. Within the period provided therefor, exceptions were filed by Sid L. Hardin, Attorney at Law, Edinburg, Texas, in behalf of 213 persons and firms, referred to as opponents, protesting the adoption of a marketing agreement and order program for tomatoes grown in the Lower Rio Grande Valley in Texas. The exceptions except generally to the entire recommended decision of the Acting Deputy Administrator for reasons of economic principles, and excepts specifically to certain findings and conclusions on the basis that they are not supported by evidence in the record. Each point covered in the exceptions filed by the attorney for the opponents was given careful consideration in conjunction with the evidence pertaining thereto in arriving at the findings and conclusions set forth herein.

Two such exceptions question the supporting evidence with respect to the findings and conclusions that the shipment of cull tomatoes has become a common practice since the prohibition of the movement of such quality was discontinued, and that, small sizes of tomatoes in a particular grade are discounted in price from the larger sizes of that particular grade. Testimony at the hearing by proponents (See, for instance, H. R., pp. 906-101, 118-130, and 769-772), also opponents (See, for instance, H. R., pp. 618, 623, and 666-667), establishes a basis for the finding that the shipment of culls has become a common practice. An opponent witness testified (H. R., p. 666) that he shipped one truckload of culls per day during the shipping season to the Washington Market in San Antonio.

Testimony by proponents with respect to prices received (see, for instance, H. R., pp. 132-133, and 506-508) refutes the exception that smaller sizes of tomatoes sell for the same prices as the larger sizes of the same grade. According to such testimony prices varied by grades and by sizes within the grades. Also, the daily market news reports (Exhibit No. 6) substantiate the fact that prices for smaller sizes of tomatoes are lower than for the larger sizes.

Exception was also taken to the finding and conclusion that Dallas and Houston do not readily accept the better grades of tomatoes. Testimony adduced at the hearing (see, for instance, H. R., p. 120) substantiates this finding. Also, an opponent witness testified that he did not sell many U. S. No. 1 or U. S. No. 2 tomatoes in Dallas because the receiver told him he could buy tomatoes cheaper and he also testified that he knew two or three big truckers haul culls to Dallas (see H. R., p. 618).

A number of points raised by the attorney for the opponents are beyond the proper scope of exceptions, but are in the nature of arguments or views. Such arguments and views do not refer to specific findings and conclusions of the recommended decision.

The remainder of the exceptions filed by the attorney for the opponents, are at variance with the findings and conclusions decided upon herein, and they are hereby overruled.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the marketing agreement and order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the marketing agreement and order including:

(a) Definitions of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions:

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee, which shall be the administrative agency for assisting the Secretary in administration of the program;

(c) The authority to incur expenses and to levy assessments on shipments;

(d) The authority for the establishment of tomato marketing research and development projects;

(e) The method for limiting the handling of tomatoes grown in the production area;

(f) The methods for establishing minimum standards of quality and maturity;

(g) The methods for authorizing special regulations applicable to the handling of tomatoes for specified purposes or to specified outlets under special regulations that are modifications of, or amendments to, grade, size, and quality regulations;

(h) The necessity for inspection and certification of shipments;

(i) The relaxation of regulation in hardship cases and the methods and procedures applicable thereto;

(j) The procedure for establishing reporting requirements upon handlers;

(k) The requirements of compliance with all provisions of the marketing agreement and order and with regulations issued pursuant thereto; and

(l) Additional terms and conditions as set forth in §§ 1014.82 through 1014.95 and published in the FEDERAL REGISTER (21 F. R. 6612) on September 1, 1956, which are common to marketing agreements and orders.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and record thereof, are as follows:

(1) All tomatoes grown in Cameron, Hidalgo, Starr or Willacy Counties in Texas (customarily referred to as the Lower Rio Grande Valley or more commonly the Lower Valley) which are handled between such production area and any point outside thereof are either in interstate or foreign commerce or directly burden, obstruct, or affect such commerce. The bulk of the Lower Valley tomatoes moves to markets outside of Texas or to markets located in the larger cities in Texas. Such tomatoes are transported by rail and truck principally to Central States, the Northeastern States, and to the Pacific Northwest. Shipments are also made to other parts of the country in lesser quantities, and many shipments are also destined for Canada. There are numerous markets in Texas which receive large quantities

of tomatoes grown in the Lower Valley as well as tomatoes from other areas outside Texas. San Antonio, Houston, and Dallas are the principal tomato markets in Texas. However, smaller quantities are sold in other Texas markets such as Austin, Fort Worth, Corpus Christi, and Amarillo. At the same time Lower Valley tomatoes are being sold and shipped, tomatoes from other producing areas are also being sold in and shipped to the same markets, both in Texas and outside thereof, receiving Lower Valley tomatoes.

Tomatoes grown in the production area compete principally with tomatoes grown in Florida and Mexico. They also compete to some extent with tomatoes grown in other producing areas in Texas, California, and other southern producing areas, such as Alabama and Georgia, since the shipping season for Lower Valley tomatoes overlaps the shipping seasons of such areas. Tomatoes produced in these competing areas compete in the same markets as tomatoes produced in the production area.

Many shipments destined originally for Texas markets are shipped in interstate commerce from such markets. It was testified at the hearing that tomatoes are sold to repackers located in Texas cities and, after ripening and repacking, are oftentimes resold in adjoining States. It was also testified that a large repacker in San Antonio also has a repacking plant in Denver, Colorado. The shipper selling tomatoes to this repacker does not know whether such tomatoes will be transported to San Antonio or Denver. Testimony also shows that tomatoes sold to repackers in Oklahoma are often sold to Texas retailers and are consumed in Texas.

Many rail shipments from the production area are consigned by the shipper to junction points in Texas such as Houston. Before the car reaches the junction point, it is sold and diverted from the junction point to a buyer located in a terminal market, usually outside of Texas.

Any handling of tomatoes grown in the Lower Valley exerts a direct influence upon all handling of tomatoes. The volume of tomatoes from a given producing area, irrespective of whether it is the Lower Valley, Florida, or Mexico, received in a terminal market will have an effect on prices received for other tomatoes offered for sale in that market. Tomato handlers, of course, try to obtain the highest possible return for their commodity. If such handlers expect to stay in business they must keep well informed on market conditions and information, in both out-of-state and Texas markets, and both buyers and sellers use modern means of communications to maintain this close association with market conditions so they can quickly take advantage of a high market.

Texas markets offer shipper opportunities for making sales the same as markets outside of the State. Two handlers who testified at the hearing stated that 30 to 40 percent of their total sales were in Texas markets. Such sales, if advantageous to the shipper, are as eagerly accepted as other advantageous sales, whether made at shipping point or in the consuming markets such as Boston, New York, or Chicago. The tomato market consists in major part of offering, quoting, bargaining, buying or selling tomatoes. Factors influencing this market are numerous. Such factors include the supply of, and demand for, tomatoes in the production area and in competing areas; the available and potential supplies in the production area and in competing areas; the quality of such supplies; the prices quoted by shippers and receivers; and a great variety of other factors which enter into the meeting of minds between buyers and sellers necessary to consummate a sale.

Such factors are considered by the seller at shipping point and the buyer in the terminal market, because factors influencing prices of tomatoes in the production area are soon reflected on prices paid in terminal markets. In turn, factors influencing prices paid in the terminals are soon reflected in prices received at shipping point. An example given at the hearing was that if Cameron County received a hard rain and Hidalgo County did not, buyers would shift to Hidalgo County points and prices there would probably increase because buyers would be bidding higher in order to obtain the available supplies. It was also testified that if a terminal market such as Houston or Dallas is glutted with culls or low quality tomatoes, prices received for good quality tomatoes are reduced so the receivers can compete pricewise with the poorer quality tomatoes. Another example of the intricate, interlocked, and dependent nature of the tomato market involves factors influencing prices in a competing shipping area. If Florida or Mexico suffers from a freeze which materially reduces the supply available for shipment from such area, prices in terminal markets receiving Florida or Mexican tomatoes react quickly. This in turn is reflected in prices received at shipping points in the production area.

The practice of diverting shipments from Houston or other junction points in Texas is also a result of the intricate nature of tomato marketing. If prices are favorable at the junction point the shipment will be sold on such market. However, if another market appears more favorable to the shipper he will have the car diverted to the second market. Because of this practice of diverting rail shipments, the shipper does not always know at the time of shipment where such shipment will be sold. Truck shipments can also be diverted, but such diversion is usually done at the discretion of the trucker rather than the shipper. If a trucker has purchased tomatoes in the production area, he usually heads for a market within Texas or a nearby State. If conditions are unfavorable at such market he oftentimes moves on to the next market. It is impossible to determine in most cases when tomatoes are sold to a trucker whether such tomatoes will be marketed within Texas or an out-of-state market.

The factors influencing the sale and movement of tomatoes make up the market for tomatoes. The interdependence of the markets both within and outside the State directly burdens, obstructs and affects interstate commerce. The factors making up the market for tomatoes constitute commerce which is so inextricably intermingled that all sale and movement of such tomatoes are either in the current of interstate or foreign commerce or directly burden, obstruct, or affect such commerce and therefore all such movement and sale of tomatoes grown in the production area should be subject to the authority of the act and of the marketing agreement and order which may be issued pursuant thereto.

(2) Lower Valley Texas tomato farmers have received less than parity prices for their early spring crop tomatoes during six of the ten seasons, 1945–46 through 1954–55. They received an average price for early spring crop tomatoes in three of these ten seasons which was in excess of parity, and during one season, 1948–49, they received the equivalent of parity prices. The relationship of prices received by the farmers for Lower Texas Valley tomatoes has been less favorable during the six year period 1950–55 than during the previous four years. During the latter period, season average farm prices for the early spring crop ranged from 75 percent to 112 percent of parity with prices received by farmers being below parity in all but one of the six seasons. In three of these latter seasons the prices received by farmers averaged less than 80 percent of parity.

For the eleven season period 1945–46 through 1955–56 prices to Lower Valley Texas tomato farmers for the late fall crop was below parity in five of the eleven seasons and above parity during the others. During the 1955 fall crop, prices averaged 80 percent of parity and the previous year the average was 87 percent of parity. The previous season, 1953–54, prices were 112 percent of parity, but during the 1952–53 late fall season, Lower Valley Texas tomatoes returned 66 percent of parity to farmers.

Prices to Lower Valley Texas tomato farmers have prevailed at levels below parity during most seasons despite the organized effort of tomato growers, handlers, and public officials to promote better marketing practices that will protect the growers' interests.

In addition to the facts hereby found that prices to Lower Valley Texas tomato farmers have been below parity for the the early spring season during most of the past ten years and for the late fall season during a significant portion of such seasons, it is also found to be a fact that prices for such tomatoes fluctuate widely within seasons. Furthermore prices vary widely for different grades and sizes of such tomatoes. Prices of such tomatoes are affected not only by the total volume of tomatoes available for market at any time but also by the grade, size and quality of such tomatoes being marketed at any given time.

Market reports show that the price of Texas tomatoes fluctuates throughout the season in terminal markets, also at f. o. b. shipping points and such prices in turn are reflected to the prices paid

farmers. These facts are substantiated by the expert testimony of growers and shippers in the record. During the 1956 season the price of U. S. No. 1 quality, 6 x 6 and larger, ranged higher than the prices of 6 x 7 same quality. Also prices of size 7 x 7's of the same quality in general were lower than for the two larger sizes. The price of U. S. No. 2, 6 x 6 and larger was in general about one-half the price of the same size of the No. 1 quality while the price of size 6 x 7 was generally less than one-half the price of the same size No. 1 quality and less than one-half the price of U. S. No. 1, 6 x 6's and larger. In general, the same relationships applied between grade and sizes for grower prices with size 6 x 6 and larger No. 1 quality returning higher prices to growers than size 6 x 7 No. 1 quality and considerably higher than size 7 x 7 No. 1 quality. In the same manner, prices of 6 x 6 and larger, U. S. No. 2 grade returned approximately one-half the price of the U. S. No. 1 quality for the same size, while size 6 x 7 No. 2 quality returned less than size 6 x 6 No. 2 quality and returned less than half the price for size 6 x 6 and larger U. S. No. 1. Similar price relationships hold for the 1955 season, as well as for the 1954 and for the 1953 season. During mid-May of the 1955 season, when f. o. b. prices of size 6 x 6 U. S. No. 1 quality ranged from $3.25 to $3.50 per 30 pound lug for mature green tomatoes the price to growers was 2 to 3½ cents per pound. Later in the season when prices were $2.75 to $3.50 f. o. b. per 30-pound lug, 6 x 6 and larger U. S. No. 1 grade, prices to growers were 1½ to 3 cents per pound. The hearing record shows the fact that similar patterns apply to the 1954 season and for the 1953 season.

The sale of cull tomatoes, the same as the sale of better quality tomatoes, has a direct effect upon the prices paid to Lower Valley tomato farmers. Some shippers do not normally sell all cull tomatoes but when such cull tomatoes are sold the prices received are substantially lower than for either No. 1 or No. 2 quality tomatoes, oftentimes returning only a salvage price. At the same time, such cull tomatoes go into commercial markets competing directly with the sale of better quality tomatoes and the sale of such cull tomatoes at the lower prices has an adverse and a depressing effect upon prices received for the better quality tomatoes and, therefore, tends to depress the prices received by growers for their tomatoes. The record shows that one shipper built up a good trade in some markets for U. S. No. 2 tomatoes, but when shipments of cull tomatoes were not prohibited and some of such poor quality tomatoes got into the markets in which the shipper was selling No. 2's, the demand for his No. 2's fell off substantially. The shipment of cull tomatoes has become a common practice since the prohibition of the movement of such quality was discontinued. Some shippers find it difficult to meet competition from cull tomatoes as long as some other shippers are allowed to sell and transport them. The record of hearing provides substantial evidence by expert witnesses that there is no place in the market for cull tomatoes from the Lower Valley and that there should be authority in the marketing order to prevent their resale and transportation because of adverse, depressing effects on prices to farmers for better grades of tomatoes.

It is also found that there is a need for a marketing agreement and order to help the industry develop orderly marketing practices that will tend to prevent abuses from overweight of containers as well as from lack of uniform sizing of tomatoes within different packs. Provision for placing competition on an even basis with respect to size among shippers is a need that will tend to promote orderly marketing of Lower Valley Texas tomatoes and will help to improve prices to farmers.

The record shows that tomato farmers and shippers in the Lower Valley of Texas have no other means of helping to promote and improve marketing conditions for their tomato crop. The need for a marketing agreement and order to assist them in promoting better marketing conditions and in increasing the prices paid to Lower Valley tomato growers for their crop is substantially shown on the basis of the record.

(3) The term "tomatoes" as used in the marketing agreement and order identifies the agricultural commodity referred to therein and distinguishes it from other agricultural commodities. The term "tomatoes" should be defined to mean all varieties of the edible fruit (lycopersicon esculentum) which are commonly referred to as tomatoes in the production area as well as throughout the United States. The definition of tomatoes as set forth in the marketing agreement and order establishes the identity of the agricultural commodity for which regulation is authorized, and establishes the commodity to which the handling activities related thereto are subject to the authority of the marketing agreement and order. Tomatoes therefore, should be defined in the marketing agreement and order to mean all varieties of tomatoes grown in the production area.

The term "production area" should be incorporated in the marketing agreement and order as a means of specifying the area within which tomatoes must be produced before the handling thereof is subject to regulation thereunder. Production area is defined to include all territory in the counties of Cameron, Hidalgo, Starr, and Willacy, in the State of Texas. "Production area", thus defined, contains all of the tomato producing counties in the lower Rio Grande Valley of Texas. Growing and climatic conditions are about the same in the four counties and there are no appreciable or sizeable acreages of tomatoes grown within approximately 150 miles of this area.

There may be minor variations in practices and methods of production, harvesting and marketing tomatoes between counties and within specific counties. Nevertheless, grading and quality standards for commercial sales are the same throughout the production area. The marketing seasons are the same as shown by the tabulation of shipments from the four counties. Each county within the production area has to share and compete in common markets at the same time. Undesirable grades, sizes, qualities and maturities of tomatoes have the same effect in the market on prices paid for Lower Valley tomatoes irrespective of the producing county.

The production area includes four counties which constitute a relatively small area bordered on the south by the Rio Grande River and Mexico on the east by the Gulf of Mexico, and which are separated from other tomato and vegetable producing sections in Texas by non-irrigated range land. The four counties differ from the surrounding counties in that the four counties have been developed for intensive farming of fruits and vegetable crops, including tomatoes, which are grown under irrigation. This section is commonly recognized as a separate and distinct production area by growers and handlers operating there, also by the produce trade in terminal markets and by official publications reporting tomato and other vegetable crops. The production area is so recognized as a distinct entity, commonly referred to as the "Lower Rio Grande Valley", or simply the "Lower Valley", because of the natural barriers of the Gulf, the international border, the insulation of range land, and the separate characteristics of the production and marketing problems encountered there by producers. The customary recognition of the four counties as a production area for tomatoes provides proper basis for the definition of production area.

Highway outlets leading out of the production area are limited to three major highways, two to the north and one to the west. There is no reasonable method or basis of dividing the production area into two or more areas for purposes of separate marketing agreements and orders. All territory included within the boundaries of the production area constitutes the smallest regional production area that is practical and consistent with carrying out the declared policy of the act, and the production area therefore should be defined as hereinafter set forth.

(4) The terms "handler" and "shipper" are synonymous. They should be defined to identify those persons who handle tomatoes in the manner described and set forth in the definition of "handle". The definition of handler establishes and identifies the persons who are to be subject to the regulations authorized by the marketing agreement and order. Any person who is engaged in the act or acts of handling or shipping tomatoes or who causes tomatoes to be handled or shipped is a handler. Such persons are responsible for the grade, size, quality and maturity of tomatoes delivered to transportation agencies or which are transported or sold in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect such commerce and such persons are handlers.

Common or contract carriers transporting tomatoes which are owned by another person are performing a handling function, but such handling should not be regulated under the

marketing agreement and order because such carriers are not responsible for grade, size, quality and maturity of the tomatoes being transported, neither are they responsible for the introduction of such tomatoes in the stream of interstate commerce. Also, the sole interest of common or contract carriers in such tomatoes is to transport them for a service charge to destinations given by others. The person or persons delivering tomatoes to a common or contract carrier should be responsible for the grade, size, quality and maturity of such tomatoes. Therefore, the term "handler" or "shipper" should be defined to mean any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

The term "handle" is defined in the marketing agreement and order to determine the particular transactions in the marketing of tomatoes, as defined herein, which fall within the authority for regulation under this program. "Handle" and "ship" are interchangeable and their definition should include the acts of selling and of moving, or otherwise transporting, tomatoes between the production area and any points outside thereof.

The great bulk of tomatoes grown in the production area is subjected, either in the field or more usually at packing houses, to grading and packing operations prior to moving to market. The tomatoes are picked by trained crews under the supervision of a grower or of a handler, i. e., packing house operator. After picking, the tomatoes are hauled to the platform of the packing house. Title to the tomatoes is usually transferred from the grower to the handler at this point. The handler takes the field-run tomatoes and runs them through the packing house for washing, grading, sizing, packing and loading. The handler makes sales, either direct to other handlers at shipping point, or to receivers or brokers in terminal markets in metropolitan or other areas outside the State or in the State. Also in some instances tomatoes are consigned to such markets.

The growing of tomatoes in the production area is a producer function and should be construed as an activity of the producer in his capacity as a producer. The harvesting of tomatoes, particularly when harvested by a crew employed by or under management of a packing house operator, also the sale or transportation of tomatoes to a packing house, i. e., to a recognized or registered handler within the production area, for grading and packing, although physically a part of a handling activity, should not be regulated under this program as such tomatoes have not yet been prepared for market. For the bulk of the tomatoes grown in and marketed from the proposed production area, the packing house operator is the handler or the person responsible for preparing the tomatoes for market and for transporting or selling the tomatoes, i. e., placing them in the channels of commerce. Compliance with the regulations which are authorized by the marketing agreement and order can readily be determined by such handler since it is he who determines the grades, sizes, packs and weights to be shipped. Of course, all subsequent handlers of such tomatoes in the production area should also have responsibility for the grade, size, quality and maturity of the tomatoes at the time such persons handle the tomatoes.

It is common practice for producers to sell or deliver their tomatoes to persons having facilities for packing and otherwise preparing the fruit for market, i. e., to persons who are generally recognized as tomato handlers. The producers, in such instances, properly rely on the persons preparing the tomatoes for market to see that the fruit which is thereafter shipped meets all applicable requirements for marketing. Thus, there should be excepted, in such instances, the movements of tomatoes from the fields to the places where the fruit will be prepared for market. It is necessary, however, to limit the scope of this exception in order to insure compliance with the regulations established under the program. Hence, it should be required that the facilities where the tomatoes are to be prepared for market be located within the production area. Otherwise, it would not be practicable for the committee to check effectively on the disposition of the tomatoes delivered to the packing facilities which did not meet the program requirements. Also, this exception should apply only in case the person engaged in the preparation of tomatoes for market has registered with the committee in accordance with such rules as it may, with the approval of the Secretary, prescribe. Registration would be necessary because some tomatoes are prepared for market in places located at or near tomato fields and it is necessary that the committee have knowledge of these locations for enforcement purposes. It is intended that the committee, under its rules, will register all handler-applicants whom it is reasonable to believe will conduct their packing and handling operations in accordance with the program requirements. It is also intended that all recognized handlers and other prospective handlers desiring to conduct their business in the usual or customary manner will register with the committee in order to enable them to obtain tomatoes without their having to meet program requirements at the time of deliveries by the producers or others.

There are some exceptions to the general rule, as outlined above, concerning handling activities for Lower Valley tomatoes. Some such tomatoes are graded and packed in the field where grown and are moved directly from the field to markets outside the production area by the producer or by truckers who purchase the tomatoes from the producer. Such persons would presumably not normally be registered handlers. However, each such sale or movement within the production area is a handling activity and, as such, makes the producer who sells the tomatoes a handler and subject to rules and regulations issued under the marketing agreement and order, because such actions place the tomatoes in the stream of commerce between the production area and points outside thereof. In like manner, the trucker who transports such tomatoes to market outside the production area also directly affects interstate commerce in tomatoes and, therefore, is subject to the terms and provisions of the marketing order.

It has been a practice in the production area to sell or to ship some tomatoes as they are picked in the field to repacking plants in the State of Texas but outside of the production area. This practice also constitutes "handling" on the part of the producer or seller. If the repacking plant, however, is located within the production area, then the operator of the repacking plant becomes the handler.

The sale or transportation of tomatoes within the production area for consumption within the production area should not be considered a handling activity under the marketing agreement and order. As there are no large population centers within the production area, such shipments are comparatively small and their regulation would be burdensome without any appreciable benefits. Also, the definition of the term "handle" does not include the sale at retail of tomatoes by a person in his capacity as a retailer.

With the exception of the activities which are specifically excluded from the definition of the term handle, all transportation and sales of tomatoes, from the time they are harvested until they move outside of the production area, should therefore be included within the definition of the term "handle."

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the marketing agreement and order. Such terms should be defined for the purpose of designating specifically their applicability in establishing the approximate limitation of their respective meanings wherever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, but also in order to recognize the fact that it is physically impossible for him to perform personally all of the functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in his stead.

The definition of "Act" provides the correct legal citation for the statute pursuant to which the proposed regulatory program is to be operative. It makes it unnecessary to refer to such citation when used thereafter in the marketing agreement and order.

The definition of "person" follows the definition of that term as set forth in the act, and will insure that it will have the same meaning as when used in the act.

"Producer" should be defined to mean any person who is engaged in a proprietary capacity in the production of tomatoes within the production area, and who is producing such tomatoes for market. A definition of the term "producer" is necessary for appropriate determinations as to eligibility to vote for, and to serve as, members or alternate members of the committee and for other reasons.

The term should be limited to those who have an ownership interest in tomatoes produced in the production area. It should not include laborers or others who perform work for a fee or for hire in producing tomatoes.

There was considerable discussion during the hearing with respect to the interpretation of the definition of producer particularly as such interpretation would apply to persons eligible to serve as committee members. The problem of determining who is a producer and who is not a producer for the purposes of the marketing agreement and order is affected by numerous credit and financial arrangements currently existing among persons connected with the growing and marketing of tomatoes within the production area.

A producer is any "person" who produces in a proprietory capacity tomatoes for market. Inasmuch as a person is defined as an individual, partnership, corporation, association, or any business unit, each such person establishes a legal entity. Each person or legal entity, whether an individual, partnership, joint venture, or corporation, so engaged in the production of tomatoes for market, should have one voice in selecting committee members and alternates in the district.

The term "producer" should be limited to those who have an ownership interest in the tomatoes which gives them title or authority to pass title to such tomatoes. The person who owns and farms land resulting in his ownership of the tomatoes produced on such land should clearly be considered as the producer of such tomatoes. The same is true with respect to the person who rents and farms land resulting in his ownership of all or a portion of the tomatoes produced thereon. Likewise a person who owns land which he does not farm but as rental for such land obtains the ownership of a portion of the tomatoes produced thereon should be regarded as a producer of that portion received as rent and the tenant on such land should be regarded as a producer of the remaining portion produced on such land. In each of the above situations where the person acquires ownership of all of the particular tomatoes such person regardless of whether he is an individual, partnership, association, corporation or other business unit should be considered as one producer and entitled to one vote. However, in cases where the ownership is divided, that is where one person obtains ownership of only a portion of the particular production and another person obtains ownership of the other portion of such production, such as a landlord-tenant relationship, each such person should be considered as a producer and entitled to one vote. However, in the case of a partnership, the partnership must vote as a unit.

The most common type of partnership appears to be the arrangement whereby one person puts up all or part of the capital and the other contributes machinery or skill, or both. Another arrangement provides that one person is responsible for selling the crop and another in growing and harvesting the tomatoes. Capital, machinery and labor may be contributed in varying degrees by each of the partners. The partnership, however, is an entity and under the definition of "producer" should have only one vote, the same as an individual or corporation. Any action with respect to such an organization regarding voting matters depends, therefore, on the partnership agreement and action by the partners pursuant thereto, irrespective of whether the partnership is composed of individuals, corporations, or combinations thereof.

Persons engaged in tomato growing operations and paid for their services on a wage or per unit of production basis should not have a producer status in the marketing agreement and order if such persons do not have title to any of the tomatoes.

"Grading" or "preparation for market" are interchangeable and means the sorting of tomatoes by hand or mechanical means, or both, so that such tomatoes are separated into grades, sizes, maturities and packs. Such classifications are determined by the handler who directs, in person or through his agent, how and in what number of classes a particular lot of tomatoes should be separated. Grading may vary from an operation performed entirely by hand in which certain tomatoes are picked out when they are being loaded at the field to a production line operation. In the latter method tomatoes are carried by mechanical conveyor through the grading operation. They are first washed and waxed. They are then carried to a series of moving belts and tables where sizes are determined and good quality, as represented by grades, sizes, and maturities, or any combination thereof, is separated from bad. It is in this operation where the tomatoes which should go to preferred price outlets are separated from those going to discounted price outlets. "Grading" or "preparation for market" is an operation which applies to all tomatoes grown in the production area even though the extent to which tomatoes are separated into market classes may vary considerably among the types of outlets.

Definitions of "grade" and "size" are incorporated in the marketing agreement and order to enable persons affected thereby to determine the basis for application of grading and size limitations to the products they handle. "Grade" and "size", the essential terms in which regulations are issued, should be defined as encompassing the meanings assigned to these terms in the official United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture and to modifications or amendments of such standards and to variations of such standards by regulations under the marketing agreement and order. Regulations under the order can then incorporate such terms (grade, size and maturity) with the constant meaning assigned thereto in such standards or in such modified or amended standards. Also, such regulations can vary such terms by prescribing, for example a percentage of grade. Official inspectors are qualified to certify to the grade, size, and maturity of tomatoes grown in the production area under the terms of the aforesaid standards or modification or amendment based thereon.

"Grade" and "size" should also be defined as comprehending the equivalents of the meanings assigned these terms in the official United States Consumer Standards for Fresh Tomatoes issued by the United States Department of Agriculture and to modifications or amendments to such standards and variations of such standards by regulations under the marketing agreement and order. The United States Standards for Fresh Tomatoes are generally used for shipments of tomatoes from the production area. However, with the increase in importance of tube packing in the shipment of "pinks" from the production area the use of the United States Consumer Standards for Fresh Tomatoes may become more customary and they should be available as a basis for regulation under the marketing agreement and order.

"Pack" should be defined as a basis for distinguishing the various units in which tomatoes are prepared for market, and shipped. The term "pack" is commonly used throughout the tomato trade and refers to a combination of factors relating to grade, size, and maturity of tomatoes and frequently to quantity and type of container. For example, U. S. No. 1 grade tomatoes, 6x6's, when put in 60 pound wire bound crates may be referred to as a specific pack. U. S. No. 2, 6x7's, also may be termed as a specific pack and with additional differentiation when packed in lugs or other various types of containers. The term "pack" should mean any pack of tomatoes as set forth in the United States Standards for Fresh Tomatoes and, in addition, it should include any other packs recommended by the committee and approved by the Secretary. Since some Texas tomatoes are "jumble" packed as opposed to the "place pack," the committee should be permitted under its rules and regulations to define and establish such packs in terms of size tolerances, grades allowed, weight of contents, and maturity in their relationship to the unit being marketed, in addition to United States Standard packs as set forth in the official standards.

"Maturity" should be defined as set forth in the marketing agreement and order. Although the bulk of Texas tomatoes are marketed as "mature greens," "pink" and "vine ripened" tomatoes are assuming an important place in the market. The application of different maturity stages to any regulations recommended by the committee would permit a basis for different regulations for mature green tomatoes and for those with a greater degree of maturity. Mature green tomatoes are considered by many handlers as more firm and less susceptible to bruising, growth cracks, and other injury or defects, than are tomatoes shipped as "pinks" or "vine-ripened" which are in later stages of maturity. Inspectors are qualified to inspect and certify for any maturity level which may be recommended by the committee.

The term "container" should be defined in the marketing agreement and

order to mean a box, bag, crate, hamper, basket, package, tube, or any other type of receptacle which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes. The definition of the term is needed to serve as a basis for differentiation among the various shipping receptacles in which tomatoes are sold or moved to market for which different regulation could be applicable.

The term "varieties" is included in the marketing agreement and order so that the committee may recognize the real differences and characteristics of different varieties and different types of tomatoes, and the differences in types of regulations which might be considered and recommended therefor. The principal variety grown at the present time for the spring deal is the Rutgers. The Grothen Globe is the leading fall crop variety. However, new varieties, such as the Weshaven and the Valiant, which differ in some respects from the aforementioned varieties, are increasing in importance. Also, there is an increase in marketing different types of tomatoes grown in the production area. For example, the "mature greens" are the most important type, but "pinks" and "stemmed" tomatoes are increasing in importance. The means set forth in the definition of varieties is appropriate for determining different varieties or types of tomatoes grown in the production area so that a basis for regulating some and not regulating others may be established.

The definition "committee" is incorporated in the marketing agreement and order to identify the administrative agency which is responsible for assisting the Secretary in the administration of the program. Such committee is authorized by the act and the definition thereof minimizes the use of words in referring to the administrative agency in the marketing agreement and order.

A definition of "fiscal period" should be incorporated in the marketing agreement and order to establish the beginning and ending of a suitable period for fiscal accounting. Such period was set forth in the notice of hearing as "beginning August 1 and ending July 31 following." However, it was testified at the hearing that the orginally proposed beginning and ending dates would not be satisfactory. While two crops of tomatoes are normally produced in the production area, i. e., a fall crop and a spring crop, the regulation of the fall crop does not appear to be likely at any time in the near future. It was also agreed that the fiscal period should begin reasonably near to the time when it is anticipated that active regulation of the commodity will commence in order to insure that collections will be made in adequate amounts to cover the costs of operations so that at the beginning of each season monthly deficits caused by operating costs can be avoided as much as possible. This undesirable result should be avoided by fixing the beginning of the fiscal period reasonably near the beginning of active regulation, which at this time would presumably be the time of the handling of the spring crop. It seemed to be generally agreed that an appropriate time for such period at the present time would be to have it begin on March 1 and end on the last day of the following February and it is concluded that such beginning and ending dates should be the ones adopted for initial use.

However, it is possible that, at some future date, it will be deemed to be desirable to regulate the fall crop. Also, it has happened in some years that shipments from the spring crop are made before March 1. Such shipments are known to have been made as soon as the early part of January. Because of the continuing desirability of starting the fiscal period as close as reasonably practicable to the beginning of active regulation, some latitude should be given for changing the beginning and ending dates to meet changed circumstances, such as those indicated in the two preceding sentences. This latitude would be afforded by the addition of an authorization in the definition for changing of the beginning and ending dates by the Secretary pursuant to the recommendation of the committee.

"District" should be defined in the marketing agreement and order as referring to each of the geographical sections or divisions of the production area either as initially established or as later reestablished in order to provide a basis for the nomination and selection of committee members for regulatory purposes. The proposed division into districts is adequate and equitable, and it provides a practical basis for the purposes for which intended.

"Export" should be defined in the marketing agreement and order as any shipment of tomatoes beyond the boundaries of the continental United States. Separate treatment for export shipments may be necessary because the requirements of certain export markets may differ from those of the domestic market and therefore different or special regulations or even no regulations may be justified with respect to such shipments. It is found from the evidence that Lower Valley tomato producers and handlers customarily consider an important distinction between such export markets as Canada and Mexico. Authority should be provided to permit different regulations for each of these markets, as well as for other markets, as circumstances may warrant. Territories and possessions of the United States should be included under the term "export" because any shipments to such markets would tend to satisfy a different type of demand than domestic shipments.

(b) The marketing agreement and order should provide for the selection by the Secretary of an administrative committee, called the Texas Valley Tomato Committee, composed of nine producer members of whom at least four should be producer-handlers. Establishment of this committee would be desirable and necessary to aid the Secretary in carrying out the declared policy of the act. The establishment of such a committee is authorized by the act. The notice of hearing provided for an administrative committee composed of nine producer members. It was testified that such a number had been generally agreed upon by the industry as being the least number of members which could represent properly all segments of the production area. Because practically all handlers of tomatoes in the Lower Valley are also producers, the proponents did not believe it was necessary to specify that a certain number of committee members should be handlers. However, evidence was introduced at the hearing to the effect that the Committee membership should include producer-handlers so that committee deliberations would be assured of the benefit of the handlers' experience in the marketing of tomatoes and their knowledge of market conditions. While the original proposal, as set forth in the notice of hearing, did not exclude producer-handlers, the evidence was such that the marketing agreement and order should specify that a certain percentage of the membership be producer-handlers to insure that such persons are named to the committee. Testimony as to the desirable number of producer-handler members related both to four and to five. Since the primary purpose of the program is to improve marketing conditions for Lower Valley tomatoes so that farmers' prices will be raised towards parity, the provision that each committee member and alternate must be a producer of such tomatoes and at least four of such members must be producer-handlers, should help to promote the objectives of the act. Inasmuch as alternates serve for their respective members in the event of the absence or disqualification of the latter, it should also be required that at least four of the nine alternate members shall be producer-handlers. This plan of representation should provide adequate and equitable representation of the tomato grower and handler interests in the Lower Valley and such producer-handler representation should help to insure comprehensive coverage of tomato marketing problems.

Each person selected as a member of the committee should be a producer or an officer, or employee of a producer, of tomatoes in the district for which selected, and should also be a resident of the production area. "Producer" is proposed to be defined as meaning any person engaged in a proprietary capacity in the production of tomatoes for market. "Person" is proposed to be defined as meaning an individual, partnership, corporation, association, or any other business unit. In addition to the qualifications for producers, producer-handler members should be persons engaged in packing and shipping tomatoes grown in the production area, or persons who are officers or employees of a producer-handler. It was testified that cooperative associations of tomato producers operate in the area by marketing tomatoes for their grower members. It is appropriate that an officer or employee of such a cooperative will be deemed to be eligible to serve as a producer-handler member or alternate member of the committee. Therefore, the requirement that a producer or producer-handler member of the committee should be a producer or producer-handler or an officer or em-

ployee of a producer or a producer-handler should not exclude any qualified individuals from serving on the committee. A person with such qualifications should be intimately acquainted with problems of producing and/or marketing tomatoes grown in the production area and each may be expected to present accurately the problems incident to production or marketing of tomatoes grown in his district. Qualifications for each alternate should obviously be the same as for the respective member for whom he may act. Such qualifications should help to assure that the interests of the group from which each is selected will be adequately represented in committee deliberation.

Each committee member and his respective alternate should serve for a one-year term of office ending as of July 31 and for any additional period needed for the selection and qualification of his successor. Such a term of office is reasonable and will allow the tomato industry to express its approval or disapproval of the committee membership at the end of any season and prior to beginning a new season. August 1 is an appropriate date for the beginning of a term of office because it is between the end of the spring growing season and the beginning of the fall growing season. In addition, no shipments of tomatoes grown in the production area are being made at that time of the year. By beginning the term of office on August 1, each new committee will be authorized to start its term between the end of an old season and the beginning of a new. Committee members and alternates should be selected for the term of office during which they are to serve and until their successors are selected and have qualified in order to insure continuity of committee operation.

Districts should be established to provide a basis for the selection of committee members. The districts as initially established were worked out by the industry and they represent the best basis which could be devised at this time for providing a fair, adequate and equitable representation on the committee.

The proposed production area comprises four counties to be divided into four districts, one for each county. These districts are logical and desirable, because county lines are well defined, and producers and handlers are familiar with such county boundaries. Each person qualified for voting can easily establish the county within which his holdings are located.

The provision for redistricting is desirable because it allows the committee to consider from time to time whether the basis for representation could be improved and how such improvement should be made. The guides, as set forth in the marketing agreement and order, which the committee should keep in mind in considering redistricting are appropriate and desirable points of reference that relate directly to the welfare of the tomato industry.

It is practical and equitable that selection of committee members and alternates should be on a geographical basis such as the districts provided for in the marketing agreement and order. Such geographical basis should be, and for purposes of initial membership has been, related to the number of producers in the production of tomatoes within the production area so that a practical basis for establishing equity has been reached.

Procedure for the election of nominees by producers and producer-handlers for membership on the committee should be prescribed in the marketing agreement and order. Such provisions will provide the Secretary with assistance by the tomato industry in selecting members and alternates for the committee. Nomination of prospective members and alternates at meetings of producers and producer-handlers in the respective districts is the customary and practical method of providing the Secretary with the names of persons whom the industry desires to serve on the committee. In order to obtain an indication of the industry's preference for membership on the initial committee, meetings of producers and producer-handlers should be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by the Department. This sponsorship should provide a practical and appropriate means for the industry to express its wishes and preferences with respect to committee membership, inasmuch as no committee would be in existence to assume such responsibility at that time.

Nomination meetings for succeeding members and alternates on the committee should be called by the committee, because it is practical, proper, and appropriate that the responsibility for calling nomination meetings for succeeding members should rest with the committee as the administrative agency for program operations. The committee should also be permitted to utilize the services of other agencies, such as, but not limited to, Extension Service representatives, to assist in conducting such nomination meetings.

It is appropriate and proper that the committee should be required to hold nominations for successor members and alternates not later than June 15th of each year, since the term of office of committee members and alternates is proposed to begin as of August 1 of each year. Nomination meetings for such successor members and alternates should be held in sufficient time to assure that nominations will be forwarded to the Secretary in time for him to make his selections prior to the beginning of each new term of office.

If the committee wishes to hold nomination meetings in connection with other meetings that are conducted on tomatoes in any or all districts, it is appropriate and proper that such nomination meetings may be so held. If on the other hand, the committee wishes to hold separate nomination meetings it is a matter of judgment and responsibility which should properly fall within the judgment of committee members.

At least two nominees should be designated for each position as member and each position as alternate, so that the Secretary will have a choice in making his selections. It is appropriate, and the marketing agreement and order should provide, that producers and producer-shippers voting at such industry meetings may ballot for nominees to indicate the ranking of their choice for each position to be filled. Nomination lists should be supplied to the Secretary not later than July 15, of each year, so that the Secretary may have sufficient time in which to select committee members prior to the beginning of the succeeding term of office.

Only producers and producer-handlers should participate in nominating members and alternates for the committee, because they are the persons who will be concerned with program operations and the persons whom the program will be designed to benefit.

If a person produces tomatoes in more than one district, such person should select the district in which he wishes to cast his vote for nominees on the committee. Any other procedure would give such persons a greater voice than other producers in the nomination of committee members.

Each producer or producer-handler participating in the industry meetings for the election of nominees to the committee should be limited to one vote on behalf of himself, his agents, subsidiaries, affiliates, or representatives. Voting on any other basis would not provide for equitable representation, because it would give producers and producer-handlers with interests in more than one district a greater voice in the election of nominees than such persons operating in only one district. The limitation of each producer's or producer-handler's right to cast one vote on behalf of himself should be construed to mean that one vote may be cast for each position which is to be filled. For example, if there are three members to be nominated from a district and three alternates to be nominated from such district, then each grower should be privileged to cast one vote for each member position and one vote for each alternate position. Such votes should be cast only in the district in which a producer or producer-shipper elects to vote. Each producer or producer-shipper presumably is interested in nominating well qualified prospective members and their interest is to be expressed in the district where they consider their major interest exists. It is presumed also that such producers and producer-handlers are dependent on tomatoes for an important part of their income. It is only fair that each grower should have the same voice in electing each person who will represent his district on the committee.

It is also desirable and necessary that the Secretary should be authorized to fill committee vacancies without regard to nominations if the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs. This provision is intended to insure continuity in case the industry fails to forward nominations to the Secretary in time for the selection to be made. The Secretary should have recourse to such means of filling vacancies in order to maintain continuity of administrative agency operation and to insure that all portions in the production area are equitably represented in the conduct of committee

business. In order that there will be an administrative agency at all times to administer the marketing agreement and order, the Secretary should be authorized to select committee members and alternates without regard to nominations if for any reason nominations are not submitted to him in conformance with the prescribed procedure. Such selection should be on the basis of the representation provided in the marketing agreement and order so that the composition of the committee will continue as prescribed.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary written acceptance of his willingness and intention to serve in such capacity. Such requirement is necessary so that the Secretary will have definite knowledge as to whether or not the position has been filled. In order to prevent excessive delay in obtaining full membership on the committee such acceptance should be filed within 10 days after notification of appointment.

An alternate member should be authorized to act in the place and stead of the member for whom he is an alternate in such member's temporary absence. An alternate should be authorized to act in a member's absence when such absence is due to death, removal, resignation, or the disqualification of the member. Alternates acting in the place and stead of members should continue to act in such capacity until the successor for the member has been selected and has qualified. This would assure continuity of the marketing agreement and order operations, prevent the committee from being without sufficient members to carry on its business, and assure adequate representation from all districts at committee meetings.

At least six of the nine members of the committee should be necessary to constitute a quorum. This would require a two-thirds majority of the committee membership and should provide ample representation from each district. Six concurring votes should also be necessary to pass any committee action at an assembled meeting. Two-thirds majority of the committee membership for a quorum and for approval of any committee action is deemed reasonable and provides a basis for adequately reflecting industry thinking in marketing problems. At assembled meetings all votes should be cast in person so the participating members will have the benefit of the discussion when casting their votes, and also to encourage members to attend assembled meetings.

The committee should have the authority to hold meetings by telephone, telegraph, or other means of communication because marketing conditions affecting tomatoes often change rapidly and it may be necessary for the committee to take speedy action which would be delayed by calling an assembled meeting. Any vote cast at such a meeting should be confirmed promptly in writing in order to provide a written record of the votes so cast. In addition any action taken as a result of a vote at an unassembled meeting should be unanimous, because members will not have the opportunity for discussion at such meetings. If a question should be so controversial that there is not unanimity of opinion, an assembled meeting should be held so the matter can be fully discussed.

Committee members and alternates should be reimbursed for necessary expenses incurred in the performance of services to the committee. Such expenses will necessarily be incurred in attending meetings in connection with the marketing agreement and order, or in performing duties for the committee outside the committee meetings. Such expenses might include travel, meals, hotel accommodations, and similar expenses. In other words, they should include actual expenses reasonably necessary to be incurred in the performance of duties in connection with the marketing agreement and order, but should not include per diem reimbursement for time involved.

The committee should be given those specific powers which are set forth in section 8c (7) (C) of the act. Such powers are authorized to be granted by the enabling statutory authority and they are necessary for an agency of the character set forth in the marketing agreement and order to function properly.

The committee's proposed duties, as set forth in the marketing agreement and order, are necessary for the discharge of its responsibilities. The duties established for the committee are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by members or alternates of the committee will be necessary for the committee to carry out its responsibilities as prescribed in the marketing agreement and order. It should be recognized that these specified duties are not necessarily all inclusive in that it may develop that there are other duties which are incidental to and not inconsistant with the terms and conditions of the marketing agreement and order and which the committee may also need to perform.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for the maintenance and functioning of such committee and for such other purposes as the Secretary may determine to be appropriate pursuant to the provisions of the marketing agreement and order. Expenses so incurred should be shared by handlers on the basis of the ratio of each handler's total shipments under regulation to the total shipments under regulation by all handlers during a specified fiscal period. Tomatoes grown in the Lower Valley involve two separate crops. In addition to the principal late spring crop, a fall crop is grown which the industry may not wish to regulate during some seasons. In this connection, it was testified that the fall crop has, for various reasons, been diminishing in importance during recent seasons and, at the present time, represents a comparatively small percentage of the total production. It is obvious that, in any season when the fall crop is not regulated, the producers and handlers of that crop would not share in the benefits of the proposed program and that, in such circumstances, it would be inequitable to require the tomatoes from such crop to bear any part of the program expenses. On the other hand, during any fiscal period when the fall crop is regulated, the tomatoes from that crop should bear their proportionate part of the program expenses. It is believed that the indicated objectives for the proration of program expenses could be equitably achieved by imposing assessments only on tomatoes which are shipped under regulation. Under such a method, the fall crop would be assessed only in the event it was regulated. The basis for determination of the ratio of shipments by individual handlers subject to assessments should be based upon the total shipments of regulated tomatoes by first handlers thereof.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of income and expenditures necessary for the administration of the marketing agreement and order for such a period. Each such budget should be presented to the Secretary with an analysis of its components and explanation thereof. It is desirable that the committee should recommend to the Secretary the rate of assessment designed to bring in during each fiscal period or period of regulation sufficient income to cover expenses incurred by the committee.

The funds to cover the expenses of the committee should be obtained by levying assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by administrative agencies such as the Texas Valley Tomato Committee and the statute also requires that each marketing agreement and order issued pursuant to the act should contain provisions requiring each handler to pay his pro rata share of the necessary expenses. Moreover, in order to assure continuance of the committee, the payment of assessments by handlers should be permitted to be required irrespective of whether particular provisions of the marketing agreement are suspended, or become inoperative.

Each handler should pay the committee upon demand his pro rata share of such reasonable expenses which the Secretary finds will be necessary by the committee in each fiscal period. As indicated above, such pro rata share of expenses in the present situation should be equal to the ratio between the total quantity of tomatoes under regulation handled by him as the first handler thereof during the period of regulation and the total quantity of tomatoes under regulation handled by all handlers during the same period. It is necessary that the responsibility for the payment of the assessment on each lot of tomatoes be fixed and it is logical, proper, and equitable to impose such liability on the first handler of such tomatoes. In most instances the first handler and the applicant for inspection are the same person. How-

ever, in the event the first handler fails to apply for and obtain inspection, this does not in any way cancel his obligation with respect to the payment of assessments.

Assessment rates should be recommended by the committee and applied by the Secretary to a specific unit of shipment. For example assessment rates may apply to carlot shipments or they may be applied to a crate, lug, or to any other unit of shipment commonly used in the marketing of tomatoes grown in the production area. However, such assessments for a fiscal period should be applied on a uniform rate basis.

At any time during, or subsequent to, a given fiscal period the committee should be authorized to recommend the approval of an amended budget and the fixing of an increased rate of assessment to balance necessary committee expenses and revenues. Upon the basis of such recommendations, or other available information, the Secretary should be authorized to approve amended budgets, and if he finds that the then current rate of assessment is insufficient to cover committee administration of the marketing agreement and order, he should be authorized to increase the rate of assessment. The marketing agreement and order should authorize the application of such increased rate of assessment to all tomatoes previously handled by first handlers during the specified period so as to avoid inequities among handlers.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purpose of administration of the marketing agreement and order, including appropriate research and development projects. The committee should be required to maintain books and records clearly reflecting the true up-to-date operations of its affairs so that its administration may be subject to inspection at any time by appropriate parties. Each member and each alternate as well as employees, agents, and other persons working for, or on behalf of, the committee should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority at any time to ask for such accounting. Whenever any person ceases to be a member of the committee he should be required to account for all receipts, disbursements, funds, property, books, records, and other committee assets for which he is responsible. Such person should also be prepared to execute assignments or such other instruments which may be appropriate to vest in his successor or agency or person designated by the Secretary the right to all such property and all claims vested in such person.

Any committee member, however, or any personnel responsible for committee funds or assets should be covered by an appropriate fidelity bond. Such requirement is a common sound business practice that should be followed by the committee and should be required of all persons handling committee funds.

If the committee should recommend that the operations of the marketing agreement and order should be suspended or if no regulation should be in effect for a part or all of the marketing season the committee should be authorized to recommend as a practical measure that one or more of its members or any other person should be designated by the Secretary to act as a trustee or trustees during such period. This would provide a practical method whereby the the committee's business affairs could be taken care of during periods of relative inactivity with a minimum of difficulty and expense to the industry and to the Secretary.

The committee should provide periodic reports on its fiscal operations. It is expected that audit reports shall be requested by the Secretary at appropriate times such as at the end of each marketing season or at such other times as might be necessary to maintain appropriate supervision and control of the committee's affairs. Handlers should be entitled to a proportionate refund of the excess assessments which remain at the end of a fiscal period or at the end of such other period as may be deemed appropriate by reason of suspension or termination. Such refund should be credited to each such handler against the operations of the following fiscal period unless he should demand payment thereof in which event such proportionate refund shall be paid to him.

If and when the committee is required to wind up its affairs upon termination of a marketing agreement and order authorizing such agency, considerable expense is involved in the liquidation process. It is appropriate, therefore, that if funds, which are in excess of those necessary for payment of expenditures during such period, remain at the end of a fiscal period. Some of such funds should be carried over into subsequent fiscal periods as a reserve for possible liquidation. Such reserve should be maintained for the purpose of helping to cover the expenses of final liquidation in the event that the marketing agreement and order are terminated. It is not anticipated that any such reserve will be accumulated in an amount in excess of what might be the reasonable cost of such liquidation action.

Any funds remaining after liquidation has been effected should be refunded to handlers on a pro rata basis. In some cases, however, individual handlers' accounts may be so small it would be impractical because of the costs involved to make such refunds. The committee should be permitted to use funds of such insignificant nature for purposes of liquidation.

(d) The establishment or provision for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes was authorized by amendments to the act in Public Law 690 known as the Agricultural Act of 1954, enacted by the 83d Congress. Such authorization should be included in the marketing agreement and order.

Research projects with respect to market development, transportation, handling methods, containers, and studies on the relative merits of different stages of maturity at which tomatoes are marketed could be of considerable value to the committee, with respect to the recommendation of regulations, and to the industry in general. It was testified at the hearing that the tomato industry in the Lower Rio Grande Valley could improve its methods with respect to grading, packing, shipping, and harvesting, so that the product offered to the consumer will receive better acceptance and thereby increase returns to tomato growers.

As the industry and the committee become more aware of the value of and need for marketing research and development, other projects will undoubtedly be initiated which may not be apparent early in committee operations. Therefore, the committee should have the authority to recommend the establishment of such projects which are in the best interests of tomato marketing, and which will assist, improve, and promote the marketing, distribution, and consumption of Lower Rio Grande Valley tomatoes. The committee should be authorized to engage in or contract for such projects, spend funds for such purpose, and consult and cooperate with other agencies with regard to their establishment. All such projects should receive prior approval by the Secretary in order to insure that such projects properly come within the purview of the indicated statutory authority.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for tomatoes, among other commodities, as will tend to establish parity prices for such tomatoes. The regulation of the handling of tomatoes by grade, size, quality, or maturity as proposed to be authorized in the marketing agreement and order should provide a means of carrying out such policy and is one of the methods authorized by the act (in section 8c (6)) for achieving that objective.

The proposed marketing agreement and order outline certain procedures and methods for the development and institution of marketing policies relating to grade, size, quality, or maturity regulations. Such procedures and methods should provide a practical basis for the committee to obtain appropriate and adequate information relating to tomato marketing problems. A marketing policy is essential each season to provide an overall plan or policy for the committee and the industry with respect to the marketing of tomatoes grown in the area during the marketing season. A marketing policy should indicate to all producers and handlers the general outlook or plan the committee intends to follow in recommending regulations with respect to tomatoes covered by the marketing agreement and order. It would also provide information to handlers so that they may make adequate preparations with respect to anticipated regulations.

In order that the Secretary may carry out effectively his responsibilities in connection with the proposed marketing agreement and order the committee should prepare and submit to the Department of Agriculture a report on each proposed marketing policy statement or

amendments thereof, relating to the marketing of tomatoes during each season. The initial marketing policy offered each season by the committee should be prepared and submitted to the Secretary prior to, or simultaneous with its initial recommendations for regulations. This should help to give all interested parties maximum notice of probable regulations. Reports on marketing policy and regulations recommended should be submitted to the Secretary and presented to the industry by the committee.

The factors set forth in the marketing agreement and order which the committee should take into consideration in developing its marketing policy are those commonly and usually taken into account by the industry in its day-to-day evaluation of the market outlook with respect to tomatoes. They are adequate and proper for the intended purposes. Limitation of the handling of poorer grades, off-qualities, and less desirable sizes and maturities of tomatoes grown in the production area should tend to increase prices of more desirable grades, qualities, sizes and maturities and thereby increase returns to producers of such tomatoes. The standards for fresh tomatoes issued by the United States Department of Agriculture would provide a common and acceptable means of determining grades, sizes, qualities, and maturities of tomatoes handled under the marketing agreement and order. Such standards are widely used throughout the area and both producers and shipping point handlers, as well as buyers, are generally acquainted with such standards and commonly use them in their market transactions. Authority should be provided for limiting the grade, size, or quality of tomatoes which may be placed in any given pack or container. Tomatoes affected by numerous serious defects may be of such low market quality that they do not qualify as any established grade under the United States Standards for Fresh Tomatoes. Such low grade tomatoes are officially referred to as "unclassified" and in trade parlance as "culls". Some tomatoes, although qualifying for an official United States grade may be of lower quality than the U. S. No. 1 or better grade, and sell at substantial discount from No. 1 or better grade. Similarly, certain smaller sizes, such as 6 x 7 and 7 x 7, sell at discounts from larger sizes, such as 6 x 6 and larger. The discounted grades and sizes are commonly referred to in the Lower Valley tomato trade as the poorer stock. The limitation of the handling by restricting movement of poorer grades, off-qualities, and less desirable sizes of tomatoes will help to improve orderly marketing conditions for such tomatoes by enhancing the long run demand for, and the competitive position of, tomatoes grown in the production area.

The orderly marketing of tomatoes grown in the production area will be promoted and farmers' returns will tend to be increased toward parity by authorizing regulation of the handling of particular grades, sizes, qualities, or packs of tomatoes differently for different varieties, differently for different stages of maturity, differently for different portions of the production area, differently for different containers, differently for different purposes for which modification or suspension of regulations may be applied, or differently for any combination of these groups during any period.

The hearing record shows that certain markets in Texas, Dallas and Houston in particular, do not readily accept the better grades of tomatoes because of the culls which were commonly sold on such markets. When culls appear in appreciable quantity on such markets terminal market receivers resist buying No. 1 or No. 2 grade tomatoes except at cull prices. Because of these experiences most shippers do not try to sell better grades in these Texas markets.

Farmers' prices for the better grades of tomatoes were much greater than for the poorer grades. The hearing record shows that, in an example offered by a competent witness, farmers received only 42 percent of the U. S. No. 1 price for U. S. No. 2 grades of the same sizes. Returns from culls were so low that they were used for overall operation of the organization. Another shipper testified that last season, according to his records, U. S. No. 2 tomatoes usually returned about 50 percent of the U. S. No. 1 price for tomatoes of the same sizes. Culls were sold at the packing house and usually returned less than five percent of the U. S. No. 1 prices for all sizes, and less than ten percent of the U. S. No. 2 prices.

The marketing agreement and order should include authority for regulating differently for different sizes of tomatoes. Evidence shows there is a variance in the Valley with respect to sizing at the present time. Some shippers, for example, will include some 6x6 size tomatoes in 6x7 packs in order to gain a slight competitive advantage over other shippers. The competing shippers then adopt the same practice or include even larger sizes. This results in a confused market which works to the disadvantage of the tomato industry in the Valley and reduces farmers' tomato prices. A receiver does not know exactly what sizes he will receive especially if he is buying from more than one shipper. This confusion has a depressing effect on the market which is in turn reflected on prices received by growers. Such practices affect growers' prices to a greater extent when growers are selling to shippers on a pack-out basis. For example, a grower receives a lower 6 x 7 price for the proportions of higher priced 6 x 6 tomatoes put into a pack marked and sold as 6 x 7 pack. The record shows that uniform sizing, if required under the marketing agreement and order, should help to restore confidence on the part of buyers with respect to sizes ordered and received, should tend to stabilize the market for particular sizes, and should eliminate the price-depressing factors which adversely affect growers' prices, thereby promoting more orderly marketing and tending to increase farmers' prices toward parity.

Demand for different varieties of tomatoes establishes price preferences for different grades or sizes or both of such varieties. For example, evidence shows the demand for "pink" and for "stemmed" tomatoes differed from the demand for mature greens. Stemmed tomatoes will return more per pound than mature greens and in some cases are generally of poorer quality, when judged by existing United States Standards, then the mature greens, in that they have more exterior defects. New varieties are being tried in the production area particularly with respect to the production of pink or stemmed tomatoes which may require differences in the application of regulations with respect thereto. There are also difference in varieties now grown in the production area. The Grothen Globe is a good example. This variety differs from other varieties, particularly the Rutgers, because it sometimes runs into difficulty in making grade because of shape. The authority to limit the grade and size of Lower Valley tomatoes differently for different varieties or types should include the authority for distinguishing between types of tomatoes as they are marketed. Such various types may include tomatoes with stems on, as distinguished from stemless tomatoes. The difference in market acceptability of such tomatoes, as well as differences involved in physical handling and packing, provides a factual basis for market distinctions which should be recognized in the marketing agreement and order.

Different regulations in terms of different stages of maturity will enable the committee to adjust its recomendations to meet different marketing problems. With the increasing importance of the "packing house pink or vine-ripened deals," repacking operations within the area may increase, which would necessitate consideration by the committee. The preference in Texas markets for more mature fruit than is ordinarily moved to out-of-state outlets is another factual basis for inclusion of this type of authority in the marketing agreement and order.

Unusual weather conditions may arise during the crop year in one portion of the crop area as compared with other portions of such area. This possibility is particularly true with respect to such natural phenomena as hail, wind, and rain storms. Hazards of this nature are obviously beyond the control or reasonable expectation of growers in such localities. Because of these circumstances and to provide equity among producers and handlers as far as regulations under the marketing agreement and order are concerned, authority should be provided for the committee to consider such differences and make appropriate recommendations in that regard and for the Secretary to issue different regulations to accommodate any such differences in the crop arising out of actions beyond human control. Any differences in regulations within the production area should be limited to taking care of natural disasters, as above indicated, and appropriate consideration should be given in recommending or issuing any such regulations to the administrative problems that would be involved. Such authority should provide for regulating in any or all portions of the production area or differently for different portions of the production area.

It is contemplated however, that any such relaxation will still require that the tomatoes shipped be the best quality available.

The marketing agreement and order should authorize the regulation of packs and should also authorize different regulations for specific packs. The standard packs, as specified in the United States Standards for Fresh Tomatoes, have been in common use by the Lower Valley tomato industry for years. However, in recent seasons there has been a trend toward "jumble" packs, which are packs without any particular arrangement of individual fruit. The need may arise whereby the committee would desire to establish the kind of packs in which the handling thereof may be permitted. It is presumed that the establishment and definition of such packs, to be set forth in rules and regulations, will spell out the grade and ranges of sizes permitted to be handled in conjunction with specified containers. Certain combinations of grade, size, and containers (which factors constitute packs) should be kept out of specified market channels when so recommended by the committee and limited by order of the Secretary, because of the adverse effect such packs have upon returns received by farmers for the tomatoes. For example, certain grades, sizes, qualities or maturities of tomatoes in certain containers should be withheld from certain outlets because such packs would reach destination in condition tending to demoralize the prices for tomatoes in superior packs and conditions. The committee should be empowered to recommend both maximum and minimum sizes and minimum grades with respect to the handling of certain packs. The marketing agreement and order should authorize different regulations for different packs so that this part of the marketing agreement and order program may help to assist the industry in furthering present merchandising approaches when deemed sound by the committee and when justified by marketing conditions.

The marketing agreement and order should permit regulations differently for different types of containers. The establishment of such regulation is authorized by virtue of an amendment to the act of Public Law 690, known as the Agricultural Act of 1954, enacted by the 83rd Congress. Principal types and sizes of containers in current use for the handling of tomatoes within the production area are the 60-pound wire bound crate, and the 30-pound lug. Other types of containers, such as a 20-pound fiber board box, are used to a lesser extent. A small volume of individual consumer size cartons or tubes containing 3 or 4 tomatoes, which in turn are packed in a master carton; are also being shipped from the production area. Should the use of certain of these containers when moved into commercial market channels be deemed by the committee, with the approval of the Secretary, as having an adverse affect upon returns to growers thereof, then the Secretary should have the power to fix the size, weight, capacity, dimensions or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of such tomatoes. For similar reasons, the committee should be permitted to recommend different regulations for different containers. The committee may determine that certain types of containers should be prohibited if the fruit contained in them is subjected to excessive damage. This would be especially important in the case of shipments of vine ripened tomatoes to interstate markets. The hearing record shows that returns to producers of tomatoes should be more favorable under conditions where the number of containers used is held at the lowest practical minimum. Accordingly, the committee may determine that the standardization of containers would be in the best interests of the industry. Therefore, the provisions relating to container regulations should be included in the marketing agreement and order as set forth.

The marketing agreement and order should authorize different regulations during any period so that the committee and the Secretary may take into account different supply and demand conditions as they may arise and become apparent.

(f) The committee should be authorized to recommend and the Secretary to establish such minimum standards of quality and maturity and such grading and inspection requirements during any and all periods when tomato prices are above parity as will be in the public interest. Some tomatoes are of such low quality that they do not give consumer satisfaction at any time because of the large amount of waste and time consumed in preparing them. Consumers do not receive proper value for their expenditures for such low quality tomatoes as culls, even when prices are above parity. It is not in the public interest either of the producers, handlers, or of consumers to permit shipments of such poor quality. The shipment of immature or over-ripe tomatoes also tends to disrupt general market conditions for the commodity and the discounted prices received for such immature or over-ripe tomatoes adversely affects grower prices. The marketing agreement and order should authorize the establishment of such minimum standards of quality and maturity as will be in the public interest. It is also necessary that such authority should include grading and inspection requirements so that such minimum standards of quality and maturity may be determined whenever such regulations are in effect.

The committee should have the authority to recommend to the Secretary the establishment of minimum quantities below which handling will be free from regulation. Most shipments of Lower Valley tomatoes are made in carlots or in trucklots. However, some small quantities are moved outside of the production area. Such small quantities constitute only a minor percentage of the total production. Some of these small shipments, such as gifts, are sold to accomodate friends. Problems of inspecting such small lots, or other problems in complying with inspection regulations on such small lots, may make it uneconomical, undesirable, and impracticable to require that such small shipments comply with all the regulations required of the larger commercial shipments. The administrative difficulties in checking upon such shipments to see that they are inspected, or that assessments are paid on them, may be such that it would be impractical for the committee to attempt to do so. However, such shipments should not be allowed to contain culls or other discounted grades and sizes to depress the market on the bulk of commercial sales. It might be necessary to permit the maintenance of one or more regulatory requirements on such minimum quantities while relaxing other regulations applicable to them. It is contemplated, of course, that any such relaxations of regulations would be applied uniformly.

(g) The Secretary, upon the basis of recommendations and information submitted by the committee or other available information, should be authorized to modify, suspend, or terminate grade, size, or quality regulations with respect to the handling of tomatoes for purposes other than disposition in normal domestic fresh markets. The committee should be well qualified because of experience and knowledge of individual members to recommend such modifications, suspensions or terminations as will be in the best interests of the Texas tomato industry, and which will tend to effectuate the declared policies of the act, and the marketing agreement and order. Tomatoes moving to, or sold in, certain outlets such as those specified in § 1014.54 of the marketing agreement and order are usually handled in a different manner. Such outlets usually accept different grades, sizes, qualities, maturities, packs, containers, or different prices are returned, or combinations of such considerations may apply. The marketing agreement and order should provide authority for the committee to give appropriate consideration to the handling of tomatoes for such purposes so that full opportunity may be taken under the program to improve orderly marketing conditions for tomatoes, thereby tending to increase total returns to tomato growers in the production area.

Some export markets accept certain grades, and particularly some sizes, which normally are discounted in some domestic markets. Provision should be made for the modification, suspension, or termination of regulations which may be applied to shipments for export so that this demand can be met when it is in the best interests of growers' returns to do so. For example, many small size tomatoes are exported to Canada. Occasional small shipments of low grades or unclassified tomatoes are made to Mexico. Prohibiting the exportation of such tomatoes would not increase sales of larger size or better quality tomatoes to these two countries. It has been the custom of most Canadian markets to prefer small sizes. The Mexican market for poor quality tomatoes from the production area is small and confined to border cities in Mexico. Differences in levels of consumer income among these outlets and differences in trading customs influence the nature of demand for tomatoes in these export outlets, so that authority for recognizing such differences should be included in the proposed

program. Therefore, the proposed marketing agreement and order should provide authority for regulating exports to Canada differently from domestic shipments, also exports to Mexico, or to any other export outlet, differently than domestic or any other export outlets.

The committee and the Secretary should have authority to give special consideration to tomatoes for relief or for charitable purposes. Such shipments are intended for special outlets and usually the shipments are by way of donation or due to some special consideration between the shippers and receivers. Occasional shipments are made from the production area to orphans' homes, hospitals, or similar facilities, and the committee should have the authority to waive some of the requirements in regard to such shipments.

The marketing agreement and order should provide that special consideration be given to the handling of tomatoes going to canning plants or other processing outlets. Shipments of tomatoes to be processed at canning plants are specifically exempted from regulation by the act. However, the committee should have the authority to require handlers making such shipments to give proper evidence that the shipments are going to the canning plant and the tomatoes are actually diverted into that outlet. No other regulation or restriction is implied on tomatoes for canning or processing. Such authority is necessary because occasional shipments of tomatoes from the production area are made to canning plants in Arkansas and other nearby States. It was testified at the hearing that the repacking of tomatoes should not be included under the term processing and that such repacking should not be given the same consideration as shipments made to canneries.

The State Agricultural College, through its Weslaco station which is located within the production area, is conducting various studies with respect to the production and marketing of tomatoes such as the acceptability of varieties, maturities, containers, and market preferences. Many of these studies are conducted with the cooperation of local shippers. Shipments are controlled since they are made under the direction of the station. However, shippers furnish the labor and packing facilities and oftentimes the tomatoes being shipped. The ultimate goal of such studies is to increase returns to the industry by reducing expenses and increasing consumer acceptance. The committee should have the authority to recommend the modification, suspension, or termination of regulations which might interfere with the successful completion of such studies.

The committee should be empowered to provide special treatment through modification, suspension, or terminations of regulations applicable to other special purposes which may develop in the future, and for other purposes which later may be specified by the committee with the approval of the Secretary.

It is appropriate and necessary that the Secretary of Agriculture notify the committee of any regulations or any modifications, suspensions, or terminations of regulations so that the committee will be informed of such actions. It is also proper that the committee after having received from the Secretary notification of regulation should relay such information on to handlers and producers within the production area. If the marketing agreement and order program is to be successful, growers and handlers must be informed of actions taken pursuant to the program.

The authority for modifying, suspending, or terminating, grade, size, quality, assessment, or inspection regulations, should be accompanied by the additional administrative authority for the committee to recommend and the Secretary to prescribe adequate safeguards to prevent shipments for such purposes from entering market channels contrary to the provisions of such special regulations. The authority for establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental to the proper and efficient administration of the marketing agreement and order. Such safeguards may include, but should not necessarily be limited to, inspection, so that the committee may have an accurate record of the grades, sizes, and qualities of tomatoes shipped to special outlets; application to make such special shipments; requirements for the payment of assessments in connection with such shipments; reports by handlers with respect to the number of such shipments and the amounts of tomatoes shipped; and assurances by purchasers and handlers that the tomatoes are to be used for the purposes designated.

In order to maintain appropriate identification of shipments of tomatoes to special outlets, safeguards authorized in the marketing agreement and order may provide for the issuance of Certificates of Privilege to handlers of such tomatoes and, in addition, may require that such handlers obtain such certificates on all shipments made by them to such special outlets. Certificates of Privilege may be issued by the committee as an indication of the authority for the handler to make such shipments and as a means of identifying specific shipments. The certificates should be issued in accordance with rules and regulations established by the Secretary on the basis of committee recommendations or other available information so that the issuance thereof may be handled in an orderly and efficient manner which can be made known to all handlers. The committee should be authorized to deny or rescind Certificates of Privilege when necessary to prevent abuse of the privileges conferred by such certificates. The committee should have authority to rescind or deny certificates when it finds upon satisfactory evidence that handlers to whom Certificates of Privilege have been issued handled tomatoes contrary to the provisions of the certificates previously issued to them. If the committee rescinds or denies a Certificate of Privilege to any handler, such action should be in terms of a specified period of time. Any handler who might have a Certificate of Privilege rescinded should have the right of appeal to the committee for reconsideration.

The Secretary should have the right to modify, change, alter, or rescind any safeguards prescribed, or any Certificates of Privilege issued by the committee in order that the Secretary may retain all rights necessary to carry out the declared policy of the act. The Secretary should give prompt notice to the committee of any action taken by him in connection therewith, and the committee should promptly notify all persons affected by any such action.

The committee should maintain records with respect to safeguards and to Certificates of Privilege, and should submit reports thereon to the Secretary when requested, in order to supply pertinent information requisite for him to discharge his duties under the act and the marketing agreement and order. Such reports should include the number of applications received, the number granted and denied, the quantity of tomatoes handled under such certificates, the purposes for which issued, and any other information that might be requested.

(h) Inspection and certification of tomatoes grown in the production area is a common and usual practice for the purpose of determining officially the grade, size, quality and maturity of such tomatoes. The Federal Inspection Service is available throughout the entire production area and its inspectors are well qualified to certify upon the basis of the United States Standards for Fresh Tomatoes or the United States Consumer Standards for Fresh Tomatoes. Tomato growers and handlers throughout the production area are acquainted with such service and with the inspection offered on shipments of tomatoes.

Provision should be made in the marketing agreement and order for inspection by the Federal Inspection Service, or such other inspection service as the Secretary may approve, of tomatoes grown in the production area and handled during any period in which such handling of tomatoes is regulated under the program. Such inspection requirements should apply to all tomatoes handled under regulations issued under the marketing agreement and order except when any such handling is relieved from inspection requirements pursuant to § 1014.53 or § 1014.54 of the marketing agreement and order. Inspection establishes a means whereby the handler, the buyer, the committee, the Secretary, and other interested parties may determine whether such tomatoes handled subject to regulations comply with the requirements of any particular grade, size, quality and maturity regulation in effect under the marketing agreement and order. Effective regulation of the handling of tomatoes grown in the production area requires that the grade, size, quality and maturity of each sale or shipment of such tomatoes should be authoritatively established. The provisions for inspection and the certificates which are issued pursuant to inspection offer an appropriate and practical means of establishing and identifying the grade, size, quality and maturity of tomatoes

handled pursuant to the terms and conditions of the marketing agreement and order.

Provision should be made in the marketing agreement and order for authority to inspect tomatoes not only by personnel of the Federal Inspection Service, but also by personnel of such other inspection service as the Secretary may designate so that sufficient flexibility for successful operation can be provided through appropriate inspection if Federal inspection is not available. In order to assure that production area tomatoes will not be shipped without inspection in the event the Federal Inspection Service is not available to furnish the service, the Secretary should be authorized to designate an appropriate inspection service to perform the inspection. Thus, there should always be an authoritative means of establishing the grade, size, quality and maturity of tomato shipments.

The requirement that no handler shall handle tomatoes unless each lot of tomatoes is inspected by an authorized inspection service approved under the marketing agreement and order is reasonable and necessary for the proper administration of the program. Such requirement should apply to all tomatoes handled except for those tomatoes which may be relieved of inspection requirements pursuant to § 1014.53 or § 1014.54 or both.

The marking of tomato containers with a number or other appropriate symbol to indicate they are part of a lot which has been inspected is a current practice among many Lower Valley tomato handlers. This marking or identification assists handlers in determining if such tomatoes have been inspected. Authority for making such marking a regulatory requirement, if the committee recommends and the Secretary approves, should be included in the proposed marketing agreement and order as a reasonable and necessary provision incidental to administration of the program.

Responsibility for obtaining inspection should fall primarily on the handler who first handles such tomatoes after they have been prepared for market since such person usually is responsible for the particular grade, size, quality and maturity to be shipped. Identification and certification of such tomatoes are essential to proper administration of the marketing agreement and order to determine whether such shipment accords with the grade, size, quality and maturity requirements issued under such order. The handler who first handles such tomatoes is required to obtain inspection and subsequent handlers may not handle tomatoes unless a properly issued inspection certificate valid under the terms of the marketing agreement and order applies to such shipment. Each handler must bear the responsibility for determining that each of his shipments is inspected. Such requirement is necessary so that the committee can obtain evidence in the form of inspection certificates which it needs to carry its appropriate functions in determining if specific shipments have been inspected and if they otherwise meet requirements of regulations issued pursuant to the marketing agreement and order.

Whenever any shipments of tomatoes subject to the terms and provisions of the marketing agreement and order have been prepared for market and inspected but are later dumped from the containers in which they were inspected, such tomatoes lose their identity insofar as the original inspection certificate is concerned and such inspection certificate no longer applies. If any such lot of tomatoes is thereafter repacked, such tomatoes, even though they may have been previously inspected in other containers, must meet regulations issued under the marketing agreement and order. Since the original certificate is no longer valid such tomatoes must be reinspected before they are shipped because it is not possible to determine whether the tomatoes which are being shipped meet the grade, size, or other regulatory requirements of the marketing agreement and order unless they are so inspected and certified. In this way handlers and the committee will be assured that such shipments comply with such regulations. The committee with the approval of the Secretary may provide for the exemption of such inspection requirements on regraded, resorted, or repacked tomatoes in circumstances where it appears reasonably certain that such tomatoes meet the applicable regulations after regrading, resorting and repacking.

The committee with the approval of the Secretary should be authorized to determine the length of time inspection certificates are valid insofar as requirements of the marketing agreement and order are concerned. Such requirement is appropriate and necessary especially with respect to lot inspections which may be administratively desirable to accommodate handlers and truckers because tomatoes are an extremely perishable commodity. It is not feasible and practical for the committee to recognize inspection certificates which may have been issued days previously, since the tomatoes so inspected could have since deteriorated and no longer comply with requirements in effect at the time the final shipment is made.

Copies of inspection certificates issued pursuant to the requirements of the marketing agreement and order should be supplied to the committee promptly by the appropriate inspection service so that such committee may properly discharge its administrative responsibilities under the program.

The committee should have the authority to recommend, and the Secretary to require, that any tomatoes transported by motor vehicle be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated. A large quantity of the tomatoes grown in the production area are trucked from the production area to market. By requiring the operators of such vehicles to surrender copies of inspection certificates applicable to their shipments upon demand to such authority as may be designated, evidence will be readily available that such shipments meet or comply with the requirements of the marketing agreement and order. The evidence indicates that such a requirement is not necessary with respect to other types of shipments, such as by railroad.

(i) Certain hazards are encountered in the production of tomatoes grown in the production area which are beyond the control or reasonable expectation of the producer of such tomatoes. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulations under the marketing agreement and order are concerned, the committee should be given authority to issue exemption certificates to producer applicants to permit such applicants to sell their equitable proportion of all shipments from the production area. It is contemplated, however, that such an exemption will require the approved applicant to sell his best quality tomatoes.

The committee, by reason of its knowledge of the conditions and problems applicable to the production of tomatoes in the production area and the information which it will have available in each case, should be well qualified to judge each applicant's case in a fair and equitable manner and to fix the quantity of exempted tomatoes which each such applicant may sell.

The provisions contained in the notice of hearing relevant to the procedure to be followed in issuing exemption certificates, in investigating exemption claims, in appealing exemption claim determinations, and in recording and reporting exemption claim determinations to the Secretary are necessary to the orderly and equitable operation of the marketing agreement and order and they should, therefore, be incorporated in the agreement and order.

Provision should be made for the Secretary to modify, change, alter, or rescind any procedure established by the committee for granting of exemptions and of exemptions granted pursuant to each procedure. This is desirable to guard against inequities in the granting of exemptions and to preclude the issuance of exemption certificates in unjustifiable cases.

(j) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the marketing agreement and order. The standards to be followed by the committee in requesting handlers to furnish reports should be along the lines set forth in § 1014.80 of the agreement and order and such reports should be those necessary for operation of the committee in carrying out the terms and conditions of the marketing agreement and order. Reports furnished to the committee should be submitted in such manner and

at such times as may be designated by it. Such reporting procedures should accord with the need and requirements of the committee which are essential to administration of the marketing order, because changing conditions may warrant changes in the forms and methods of reporting. The Secretary should retain the right to approve, and also to modify, change, or rescind, any requests by the committee for information in order to protect handlers from unreasonable requests for reports.

Permissive use of the specified reporting requirements, and verifications of such reports and records by the committee will provide a means for it to check on compliance with and operation of the marketing agreement and order.

Since it is possible that a question might arise with respect to compliance with the marketing agreement and order, each handler should maintain complete records of his handling and disposition of tomatoes for not less than two years subsequent to the termination of each crop year.

Any and all reports and records submitted for committee use by handlers should remain under appropriate protective classifications and be disclosed to none other than persons authorized by the Secretary.

(k) Except as provided in the marketing agreement and order, no handler should be permitted to handle tomatoes, the handling of which is prohibited pursuant to the marketing agreement and order, and no handler should be permitted to handle tomatoes except in conformity with the marketing agreement and order. If the program is to be effective, no handler should be permitted to evade its provisions since such action on the part of one handler, although possibly of small impact on the industry measured by the proportion of tomatoes handled by him, would be demoralizing to other handlers and would tend to impair operation of the program.

(l) The provisions of §§ 1014.82 through 1014.92, as published in the FEDERAL REGISTER of September 1, 1956 (21 F. R. 6612), and as hereinafter set forth, are common to marketing agreements and orders now operating. The provisions of §§ 1014.93 through 1014.95, as hereinafter set forth, are also included in other marketing agreements now operating. Each of such sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the marketing agreement and order. These provisions are incidental to, and not inconsistent with, section 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the marketing agreement and order and to effectuate the declared policy of the act. The substance of such provisions, therefore, should be included in the marketing agreement and order.

General findings. Upon the basis of evidence introduced in the hearing and the record thereof it is found that:

(1) The marketing agreement and order as hereinafter set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to tomatoes produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such tomatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such tomatoes as will be in the public interest:

(2) The said marketing agreement and order authorizes regulation of the handling of tomatoes grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of industrial and commercial activity specified in a proposed marketing agreement and order upon which the hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several marketing agreements and orders applicable to any subdivision of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes, as defined in the said marketing agreement and order, is in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

The marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively "Marketing Agreement Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley in Texas" and "Order Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley of Texas" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. The aforesaid marketing agreement and the aforesaid order shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision except the attached agreement be published in the FEDERAL REGISTER. The regulatory provision of the said marketing agreement and order are identical with those contained in the annexed order which will be published with this decision.

Dated: February 21, 1957.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

Order[1] *Regulating the Handling of Tomatoes Grown in the Lower Rio Grande Valley of Texas*

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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AUTHORITY: §§ 1014.0 to 1014.92 issued pursuant to sec. 5, 48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047.

§ 1014.0 *Findings and determinations.* (a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31 as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Edinburg, Texas, on September 24–27, 1956, upon a proposed marketing agreement and a proposed marketing order regulating the handling of tomatoes grown in the Lower Rio Grande Valley in Texas (Cameron, Hidalgo, Starr, and Willacy Counties). Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) This order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to tomatoes produced in the production area by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as the prices to the producers thereof, parity prices, and by protecting the interests of the consumer (i) by approaching the level of prices which is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such tomatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such tomatoes as will be in the public interest;

(2) This order authorizes regulation of the handling of tomatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activities as specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) This order is limited in its application to the smallest regional production area which is practicable consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to different subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) This order prescribes, so far as practicable, such different terms applicable to the different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes, as defined in this order, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

Order relative to handling. It is, therefore, ordered that, on and after the effective time hereof the handling of tomatoes grown in the Lower Rio Grande Valley in Texas shall be in conformity to and in compliance with the terms and conditions of this order; and such terms and conditions are as follows:

DEFINITIONS

§ 1014.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1014.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

§ 1014.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 1014.4 *Production area.* "Production area" means all territory in the counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

§ 1014.5 *Tomatoes.* "Tomatoes" means all varieties of the edible fruit (lycopersicon esculentum) commonly known as tomatoes and grown within the production area.

§ 1014.6 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

§ 1014.7 *Handle.* "Handle" or "ship" means to transport, sell, or in any other way to place tomatoes in the current of commerce between the production area and any point outside thereof: *Provided,* That such terms will not include the transportation, sale, or delivery of tomatoes by a producer to a handler who is registered as such with the committee.

§ 1014.8 *Producer.* "Producer" means any person engaged in a proprietary capacity in the production of tomatoes for market.

§ 1014.9 *Grading.* "Grading" is synonymous with "preparation for market" and means the sorting or separation of tomatoes into grades, sizes, maturities, and packs for market purposes.

§ 1014.10 *Grade and size.* "Grade" means any one of the established grades of tomatoes and "size" means any one of the established sizes of tomatoes as defined and set forth in U. S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1876 of this title) or U. S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 1014.11 *Pack.* "Pack" means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1876 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

§ 1014.12 *Maturity.* "Maturity" means various degrees of ripeness for tomatoes as established by the committee with approval of the Secretary.

§ 1014.13 *Container.* "Container" means a box, bag, crate, hamper, basket, package, tube, or any other type of unit used in the packaging, transportation, sale, shipment, or handling of tomatoes.

§ 1014.14 *Varieties.* "Varieties" means and includes all classifications, subdivisions, or types of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee, and approved by the Secretary.

§ 1014.15 *Committee.* "Committee" means the Texas Valley Tomato Committee, established pursuant to § 1014.22.

§ 1014.16 *Fiscal period.* "Fiscal period" means the annual period beginning March 1, and ending on the last day of February of the following year, or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 1014.17 *District.* "District" means each of the geographic divisions of the production area initially established pursuant to § 1014.24 or as reestablished pursuant to § 1014.25.

§ 1014.18 *Export.* "Export" means shipment of tomatoes beyond the boundaries of continental United States.

COMMITTEE

§ 1014.22 *Establishment and membership.* (a) The Texas Valley Tomato Committee, consisting of 9 producer members, of whom at least 4 shall be producer-handlers, is hereby established. For each member of the committee there shall be an alternate. At least 4 of the alternate members shall also be producer-handlers.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a producer, in the district for which selected and a resident of the production area. An officer or employee of a cooperative association of tomato producers which markets

the tomato production of its members shall be eligible to serve on the committee as a producer-handler member or alternate. In addition the producer-handler representatives shall be handlers in the production area.

§ 1014.23 *Term of office.* (a) The term of office of committee members and their respective alternates shall be for one year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 1014.24 *Districts.* For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established:

District No. 1. The County of Cameron in the State of Texas;

District No. 2. The County of Hidalgo in the State of Texas;

District No. 3. The County of Starr in the State of Texas; and

District No. 4. The County of Willacy in the State of Texas.

§ 1014.25 *Redistricting.* The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 1014.26 *Selection.* The Secretary shall select initially three members and their respective alternates from District 1; four members and their respective alternates from District 2; one member and his alternate from District 3; and one member and his alternate from District 4.

§ 1014.27 *Nomination.* The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and producer-handlers shall be held in each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(c) Nominations for committee members and alternates, shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15, of each year;

(d) Only producers and producer-handlers may participate in designating nominees for members and alternates on the committee. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 1014.28 *Failure to nominate.* If nominations are not made within the time and in the manner specified in § 1014.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 1014.24 through 1014.26 inclusive.

§ 1014.29 *Acceptance.* Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 1014.30 *Vacancies.* To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 1014.27. If the name of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 1014.24 through 1014.26, inclusive.

§ 1014.31 *Alternate members.* An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence, or when designated to do so by the member for whom he is an alternate. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 1014.32 *Procedure.* (a) Six members of the committee shall be necessary to constitute a quorum and six concurring votes shall be required to pass any motion or approve any committee action. At assembled meetings all votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided,* That at any unassembled meeting unanimous vote of all committee members will be required to approve any action.

§ 1014.33 *Expenses and compensation.* Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

§ 1014.34 *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1014.35 *Duties.* It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 1014.40 *Expenses.* The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of tomatoes under regulation handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes under regulation handled by all handlers as first handlers thereof during such fiscal period.

§ 1014.41 *Budget.* As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 1014.42 *Assessments.* (a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were handled by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 1014.43 *Accounting.* (a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. An appropriate fidelity bond shall be required for all committee members or personnel responsible for receipt, custody, or disposition of committee funds. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 1014.44 *Refunds.* At the end of each fiscal period, monies arising from the excess of assessments collected over expenses shall be accounted for as follows:

(a) Each handler entitled to a proportionate refund of such excess assessments at the end of a fiscal period shall be credited with such refund against the operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him; except

(b) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that some of the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve for possible liquidation. Upon approval by the Secretary, such reserve may be used upon termination of this order to liquidate the affairs of the committee: *Provided,* That upon termination of this part any monies in the reserve for liquidation which are not required to defray the necessary expenses of committee liquidation shall be returned upon a pro rata basis to all persons from whom such funds were collected.

RESEARCH AND DEVELOPMENT

§ 1014.48 *Research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 1014.42.

REGULATION

§ 1014.50 *Marketing policy.* Prior to or at the same time as initial recommendations are made pursuant to § 1014.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 1014.51 *Recommendations for regulations.* The committee, upon complying with the requirements of § 1014.50, may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 1014.52 *Issuance of regulations.* (a) The Secretary shall limit by regulation the handling of tomatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act.

(b) Such regulation may:

(1) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities, or packs of any or all varieties of tomatoes during any period; or

(2) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different stages of maturity, for different portions of the production area, for different containers, for different purposes specified in § 1014.54, or any combination of the foregoing, during any period; or

(3) Limit the shipment of tomatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(4) Fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

§ 1014.53 *Minimum quantities.* The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 1014.42, 1014.52, 1014.54, or 1014.60, or any combination thereof.

§ 1014.54 *Handling for special purposes.* Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 1014.42, 1014.52, 1014.53, or 1014.60, or any combination thereof, in order to facilitate shipments of tomatoes for the following purposes:

(a) For export;

(b) For relief or for charity;

(c) For processing;

(d) For experimental projects; or

(e) For other purposes which may be specified.

§ 1014.55 *Notification of regulation.* The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 1014.56 *Safeguards.* (a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent tomatoes handled pursuant to §§ 1014.53 or 1014.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to handle tomatoes pursuant to §§ 1014.53 and 1014.54; or

(2) Handlers shall obtain inspection provided by § 1014.60, or pay the assessment levied pursuant to § 1014.42, or both, in connection with shipments made under § 1014.54.

(3) Handlers shall obtain Certificates of Privilege from the committee for handling of tomatoes affected or to be affected under the provisions of §§ 1014.53 and 1014.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 1014.53 and 1014.54 were handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 1014.60 *Inspection and certification.* (a) During any period in which handling of tomatoes is regulated pursuant to this subpart no handler shall handle tomatoes unless such tomatoes have been inspected by an authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 1014.53, or 1014.54, or both. Handlers may be required, upon recommendation of the committee and approval of the Secretary, to mark or indicate on the containers that the tomatoes therein have been inspected.

(b) Regrading, resorting, or repacking any lot of tomatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle tomatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each lot of such tomatoes is inspected by an authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That the committee, with approval of the Secretary, may provide for waiving inspection requirements on any tomatoes in circumstances where it appears reasonably certain that, after regrading, resorting, or repacking, such tomatoes meet the applicable quality and other standards then in effect.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When tomatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(e) The committee may recommend and the Secretary may require that any tomatoes transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

EXEMPTIONS

§ 1014.70 *Procedure.* The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 1014.71 *Granting exemptions.* The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 1014.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes have been adversely affected by acts beyond the applicant's control and beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

§ 1014.72 *Investigation.* The committee shall be permitted at any time to make a thorough investigation of any producer's claim pertaining to exemptions.

§ 1014.73 *Appeal.* If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 1014.74 *Records.* (a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of the amount of tomatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 1014.70, 1014.71, 1014.72, or 1014.73, or any combination thereof.

REPORTS

§ 1014.80 *Reports.* Upon the request of the committee, made with approval

of the Secretary, each handler shall furnish to the committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part. In this connection:

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each exempted disposition and of all tomatoes handled pursuant to §§ 1014.53 and 1014.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 1014.81 *Compliance.* Except as provided in this subpart, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle tomatoes except in conformity to the provisions of this subpart.

§ 1014.82 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 1014.83 *Effective time.* The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 1014.84 *Termination.* (a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production of tomatoes for market: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1014.85 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 1014.86 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 1014.87 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 1014.88 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 1014.89 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 1014.90 *Personal liability.* No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 1014.91 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 1014.92 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Order Directing That a Referendum Be Conducted Among Producers; Designating Agent To Conduct Such Referendum; and Determination of a Representative Period

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), it is hereby directed that a referendum be conducted among producers who during the period March 1, 1956, to March 1, 1957 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged in the Lower Rio Grande Valley in Texas (Cameron, Hidalgo, Starr, and Willacy Counties), in the production of tomatoes for market to determine whether such producers approve or favor the issuance of an order regulating the handling of tomatoes grown therein; and said order is annexed to the decision of the Secretary of Agriculture filed simultaneously herewith.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda Among Producers in Connection with Marketing Orders (Except Those Applicable to Milk and Its

Products) to Become Effective Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (15 F. R. 5176).

E. H. Bixby and E. E. Gallahue, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated as agents of the Secretary of Agriculture to conduct said referendum jointly or severally.

Copies of the text of the aforesaid annexed order may be examined in the office of the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., and at those places within the production area (i. e., the Counties of Cameron, Hidalgo, Starr and Willacy in the State of Texas) announced by the referendum agents.

Ballots to be cast in the referendum and copies of the text of said order may be obtained from any referendum agent and any appointee hereunder.

[F. R. Doc. 57-1485; Filed, Feb. 27, 1957; 8:46 a. m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 211]

[No. MC-C-2078]

USE OF RELOCATED, RENUMBERED, AND ALTERNATE HIGHWAYS, DEVIATION FROM AUTHORIZED ROUTES, AVOIDANCE OF SPECIFIED POINTS OR GATEWAYS, SERVICE AT MILITARY INSTALLATIONS, AND DEADHEADING OF EMPTY VEHICLES BY MOTOR COMMON AND CONTRACT CARRIERS SUBJECT TO INTERSTATE COMMERCE ACT; DEVIATION RULES

NOTICE OF PROPOSED RULE MAKING

FEBRUARY 11, 1957.

Pursuant to section 4 (a) of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1003) notice is hereby given that effective April 15, 1957, unless otherwise ordered in the interim, the above-entitled rules and regulations promulgated by the Commission's order of June 28, 1955, will be revised to read as indicated and set forth in the attached order which is hereby referred to and made a part hereof.

No oral hearing is contemplated but anyone wishing to do so may by the submission of written data, views, or arguments make representations:

(1) For or against the proposed rules or any of them, or

(2) For or against the retention of any rules whatsoever which allow any deviations merely upon the filing of notice with only implied or informal approval.

The original and 14 copies of any such representations shall be filed with the Commission on or before April 1, 1957.

Notice hereof to the general public shall be given by depositing a copy in the Office of the Secretary of the Commission, for public inspection and by filing a copy with the Director, Division of the Federal Register.

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 11th day of February A. D. 1957.

Short title. This order may be referred to and cited as the Commission's Revised Deviation Order of 1957.

The above subject coming on for further consideration, and

It appearing that by order dated June 28, 1955, effective August 12, 1955, the Commission, Division 5, adopted rules and regulations governing deviations by motor carriers holding authority from this Commission from authorized regular routes, or required gateways, and in other instances, and the deadheading of empty vehicles incidental to authorized transportation in interstate or foreign commerce;

And it further appearing that revision of such rules is desirable in the interest of clarification and to enhance their value, and make their application more definite and certain; and good cause therefor appearing:

It is ordered, That the said rules be, and they are hereby revised by deleting the entire context of Part 211, and substituting in lieu thereof the following:

§ 211.1 *Deviations by motor carriers subject to the Interstate Commerce Act from authorized regular routes, or required gateways, and in other instances*—(a) *Applicability of rules.* Subject to all other rules and regulations of the Commission applicable to specific situations or operations, such as the Commission's Regulations Governing the Transportation of Explosives and Other Dangerous Articles (§ 197.1 (d) of this chapter), none of which other rules or regulations is superseded by this part, the rules and regulations in this part are hereby found to be just and reasonable and adopted and made applicable so far as pertinent to the operations within the United States under authority of certificates and permits issued by this Commission, of all motor carriers, except motor carriers of passengers when operating in New York City, N. Y., Rockland, Westchester, and Nassau Counties, N. Y., Fairfield County, Conn., and Passaic, Bergen, Essex, Hudson, Union, Somerset, Middlesex and Monmouth Counties, N. J.

(b) *Definitions.* As used in this part, the following words and terms shall be construed to have meanings a follows:

(1) *Designated highway.* A highway identified for record purposes by a number, letter, or name such as a turnpike, thruway, expressway, freeway, or as an "unnumbered county or state road", or in some other like manner.

(2) *Redesignated highway.* A highway to which there has been assigned a new designation, either number, letter, name, or other identifying reference, in lieu of a designation previously assigned thereto.

(3) *Relocated highway.* A highway which has been constructed in a new location in lieu of an existing highway or a segment or segments thereof, and which is intended to replace such existing highway or a segment or segments thereof for public use.

(4) *Regular service route.* A designated highway or series of highways over which a motor carrier is specifically authorized to operate with provision in the carrier's certificate or permit for service at terminal, intermediate, or off-route points as specified therein, as distinguished from an alternate route as defined in subparagraph (5) of this paragraph. Such regular service route may be described as a single route in a carrier's authority or as two or more routes which are combined by joinder at a common service point or points.

(5) *Alternate route.* A designated highway or series of highways lying wholly within the United States over which a motor carrier may operate in the interest of economy or convenience or to avoid congested areas, dangerous grades, sharp curves, or other hazards on an authorized regular service route, deviating from a point on such authorized regular service route and returning at some other point on the same regular service route.

(6) *By-pass route.* A route designated by proper authority for the general purpose of avoiding traffic congestion in a heavily populated area or areas.

(7) *Detour route.* The highway or highways designated by proper authority for public use while the highway or highways normally used between specified points is, or are, temporarily closed or restricted, as by reduced weight limits, or for repairs or reconstruction, or for any other reason.

(8) *Deviation route.* Any of the facilities used by a motor carrier under authority of this part in lieu of its authorized service route.

(9) *Point of deviation.* The point where a regular-route motor carrier using, or proposing to use, an alternate route, as defined in subparagraph (5) of this paragraph, or other deviation route, under authority of this part, departs from, or proposes to depart from its specifically authorized regular service route.

(10) *Point of return.* The point where a regular-route carrier using, or proposing to use, an alternate route, as defined in subparagraph (5) of this paragraph, or other deviation route, under authority of this part, returns to, or proposes to return to, its specifically authorized regular service route.

(11) *Deadheading empty vehicle.* The movement of empty vehicles from a point where cargo has been delivered back to the carrier's terminal or to another authorized point of service.

(12) *Service point.* A point authorized to be served by a carrier as distinguished from one through which such carrier may operate but without performing any service.

(c) *Authority for deviations by motor carriers from operating authorities in described circumstances.* Subject to the special rules, requirements, and conditions governing particular situations hereinafter stated, and subject also, when reference is made thereto, to the general conditions and requirements set forth in paragraph (d) of this section, motor carriers holding operating authority from this Commission except certain motor carriers of passengers as provided in paragraph (a) of this section, are hereby authorized, in the circumstances hereinafter described, to deviate from

their specifically authorized regular service routes, to avoid operations through specific points or gateways, and otherwise to depart from their specific authority, in the circumstances and to the extent hereinafter stated without obtaining other prior specific authority therefor:

(1) *Redesignated highways.* Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment thereof without relocation is redesignated, the carrier shall so advise the Commission, by letter, giving sufficient information regarding the old and the new designation, the points between which the highway designation has been changed, and the place or places where such highway is referred to in the carrier's authority, to facilitate appropriate changes in the records of the Commission. The new designation of the highway will be shown in the carrier's certificate or permit when the Commission has occasion to reissue it.

(2) *Relocated highway and abandonment of old highway.* Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment or segments thereof are relocated, and where the old highway or any segment thereof is no longer maintained for use by the general public, the carrier may operate over such relocated highway or relocated segment or segments under its authority without notice to the Commission of such change, and in so doing may serve as intermediate or off-route points, on, or from, the new highway those points previously authorized to be served as intermediate or off-route points on or from the old highway, provided there is no other change in the service previously rendered in connection with operations over the old highway.

(3) *Relocated highway and maintenance of old highway under new designation.* (i) Where a carrier is authorized to operate over, and to serve points on, a specified highway and thereafter that highway or a segment or segments thereof are relocated but the old highway is maintained for use by the general public under a new designation, the carrier shall not without first obtaining specific authority from the Commission, transfer its operations to the relocated highway or relocated segments thereof but must continue to operate over the old highway and advise the Commission of the change in the designation thereof furnishing the same information as required in connection with subparagraph (1) of this paragraph. The new designation of the highway will be shown in the carrier's certificate or permit when the Commission has occasion to reissue it.

(ii) Where a carrier is authorized to operate over a specified highway but is not authorized to serve any point on such highway and thereafter such highway or a segment or segments thereof are relocated, but the old highway is maintained for use by the public under a new designation, the carrier may, if it so desires, use as its operating route only the new or relocated highway, provided it promptly advises the Commission of such change giving descriptions of the old and the new highways between the points involved and the other information required by subparagraph (1) of this paragraph.

(4) *Highways and streets within commercial zones.* When, pursuant to the order in Ex Parte No. MC 37, Commercial Zones and Terminal Areas dated February 11, 1952, as revised July 9, 1952, a motor carrier of property has the right to serve all points in the commercial zone of a municipality, or all points in a defined territory adjacent to an unincorporated community, by virtue of its holding of authority to serve the municipality or the unincorporated community, the carrier in serving places within such municipality or its commercial zone or within the unincorporated community or authorized territory adjacent thereto may use any highway or street located therein, without notice to the Commission.

(5) *By-pass routes.* Where a by-pass route has been designated to be used for the purpose of avoiding a congested area or areas, a carrier having an authorized route through such area or areas, which desires to use such by-pass route as an alternate route may do so regardless of the comparative length of such route (compare subparagraph (8) (ii) of this paragraph) but subject to the general conditions and requirements set forth in paragraph (d) of this section.

(6) *Bridges, tunnels, and ferries.* Where a new bridge or tunnel has been constructed to replace an old bridge or a ferry, to avoid circuity, or to eliminate a hazardous curve or grade, a regular-route carrier having authority to use the old facility and desiring to use in lieu thereof such new bridge or tunnel and the approaches thereto, may do so, subject to the Commission's Safety Regulations and subject also to the general conditions and requirements set forth in paragraph (d) of this section.

(7) *Detour routes.* When a federal, state, county, or other government official, in the exercise of his powers, temporarily prohibits the use by a carrier of an authorized service route or a segment or segments thereof, or when opperations over a carrier's authorized service route or a segment or segments thereof are temporarily obstructed or rendered unsafe by any cause over which a carrier has no control, or when a highway or a segment thereof which comprises all or any portion of the carrier's authorized regular service route is by appropriate authority made subject to weight or other restrictions which temporarily prevent the operation of the equipment regularly and normally used by the carrier over that route, and when, because of any one or more of the foregoing, a detour route has been officially designated by proper authority for public use in lieu of the closed, obstructed, unsafe, or restricted highway, the carrier may use such officially designated detour route in lieu of the temporarily closed, obstructed, unsafe, or restricted highway, provided (i) that no service is rendered at any point the carrier is not specifically authorized to serve, (ii) that, so far as suitable detour routes are available, the carrier continues to furnish reasonable and adequate service at all points it is authorized to serve, and (iii) that, if use of the detour route will continue for more than 30 days and if the distance over the detour route is less than 90 percent of the distance over the authorized service route, a statement shall be obtained from the governmental authority exercising control over the highways involved and filed by the carrier with the Commission together with a notice in writing of its intent to use such detour route under authority of this subparagraph, which statement shall show (*a*) the nature of the condition which prevents operations over the authorized route, (*b*) the period of time it is anticipated that the service route will not be usable and (*c*) proper identification of the official detour route. Where a detour route is used under the provisions of this subparagraph, the carrier shall discontinue operations over such route and resume operations over its authorized service route immediately upon removal of the condition which necessitated use of the detour route.

(8) *Alternate routes for operating convenience only.* Where a motor carrier is authorized to operate over a regular service route and there is wholly within the United States another highway which extends in the same general direction as such regular service route and affords a reasonably direct and practicable route between any two points on such regular service route, it may, subject to the general conditions and requirements set forth in paragraph (d) of this section, use such other highway as an alternate route for operating convenience only with no service at any intermediate point thereon, and with no service at the termini except as otherwise authorized, in the manner and to the extent, as follows:

(i) *Superhighways as alternate routes.* Where a motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route, and wholly within the United States a so-called superhighway, turnpike, thruway, freeway, or expressway, which is substantially the same in purpose, design, and construction as such highways as the Pennsylvania Turnpike, the New Jersey Turnpike, the Turner (Oklahoma) Turnpike, the West Virginia Turnpike, and the New York Thruway, such superhighway, turnpike, thruway, freeway, or expressway and such additional highways as it may be necessary to use in traveling by the shortest practicable route between the carrier's authorized regular service route and the superhighway, turnpike, thruway, freeway, or expressway may be used as an alternate route between two points on the carrier's regular service route regardless of the distance between the point of deviation and the point of return, and regardless of whether or not such alternate route crosses or intersects any other specifically authorized service or alternate route of the carrier at any place intermediate to the points of deviation and return: *Provided,* That use of the alternate route will not materially change the competitive situation between such carrier and any other.

(ii) *Highways other than superhighways.* Where a motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route and wholly within the United States another highway which is not a so-called superhighway, turnpike, thruway, freeway, or expressway, the carrier may use such other highway as an alternate route for operating convenience only provided that the distance over such alternate route between the points of deviation and return is not less than 90 percent of the distance over the authorized regular service route between the same points and provided further, that the alternate route proposed does not duplicate, or involve operations over any part of any authorized service route described in the carrier's certificate or permit and does not cross or otherwise intersect any authorized service route of the carrier or pass through any authorized off-route point or any part of the commercial zone of any authorized point either off-route or other, except at the points of deviation and return.

For the purpose of this subparagraph:

(*a*) The crossing of another route by overpass or underpass also shall be deemed to be a crossing or an intersection.

(*b*) The prohibition against the inclusion in any alternate route proposed to be used thereunder of any part of any authorized service route of the carrier shall not be deemed to prohibit the inclusion in an alternate route used under this subparagraph of a segment of a specifically authorized alternate route provided the distance over the alternate route used under this subparagraph is computed from point of deviation from a service route to the point of return to the same service route including the embraced segment of the specifically authorized alternate route.

(*c*) The prohibition against the crossing by any alternate route used under this subparagraph of any authorized service route shall not be deemed to prohibit the crossing of a specifically authorized alternate route.

(9) *Deadheading empty vehicles.* A motor carrier may deadhead empty vehicles over any highway which will accomplish a reasonably direct and practicable return of the equipment to a terminal of the carrier or to one of its authorized service points.

(10) *Deviation from regular service route in the transportation of U. S. Mail.* Subject to the general conditions and requirements set forth in paragraph (d) of this paragraph, common and contract carriers of property holding authority to operate over regular routes may, without obtaining prior authority therefor, deviate from their authorized service routes for the purpose of delivering or picking up U. S. Mail, under contract with the Post Office Department, at points within 10 airline miles of authorized service routes and in the course of such deviation, may transport authorized commodities in the same vehicle with mail, provided that no commodity other than mail may be picked up, delivered, or interchanged with another carrier, at any point not specifically authorized.

(11) *Deviations by motor carriers of explosives and other dangerous articles.* Subject to the general conditions and requirements set forth in paragraph (d) of this section:

(i) A regular-route motor carrier of explosives or other dangerous articles in order to avoid streetcar tracks, tunnels, viaducts, dangerous crossings, or places where persons are assembled, may use any practicable route lying wholly within the United States provided that the distance over the route used between the point of deviation and the point of return is not less than 90 percent of the distance over the service route between those points, or if it is less than 90 percent provided the deviation route used is at all points within 10 miles of the authorized place which is bypassed.

(ii) Common carriers of explosives and other dangerous articles operating over either regular or irregular routes, or both, may in the interest of safety interchange shipments or equipment or combine routes or operating rights at any place within ten miles of any point where interchange or joinder is permissible under the existing authorities of the carrier or carriers involved.

(12) *Service at military installations.* (i) If there exists an entrance or gate to a military installation which is within the limits of the authority held by a motor carrier and the carrier with the consent and approval of the officer in charge is openly, lawfully, and regularly (as distinguished from surrepticiously, sporadically, or infrequently) using such entrance or gate in the rendition to or from the installation of (*a*) a general transportation service or (*b*) a specialized or limited service, and if such entrance or gate is by appropriate authority closed, or restricted against particular traffic, or if for some other reason beyond its control, the carrier is unable to continue to use that entrance or gate for the same purpose as in the immediate past it may, subject to the general conditions and requirements set forth in paragraph (d) of this section, use other entrances or gates in continuing to serve the installation in the same manner and in the rendition of the same type of service as was theretofore preformed through the closed or restricted entrance or gate: *Provided,* That in so doing the carrier does not travel more than 20 highway miles over public highways outside the scope of its authority.

(ii) This subparagraph shall not be construed by any carrier as authority for the rendition, through an entrance or gate which is located outside the limits of its authority, of any service which was in fact discontinued prior to the closing or restriction of the authorized gate or entrance, or any service essentially different from that rendered through the gate or entrance located within the limits of its authority immediately prior to the closing or restriction thereof.

(d) *General conditions and requirements.* Where reference is made thereto in any of the foregoing special rules governing particular situations, the following general conditions and requirements shall be applicable and shall be complied with as a condition to the grant of authority herein for the particular deviation:

(1) Any proposed deviation under this part, except one over an alternate route under paragraph (c) (8) of this section, may be instituted by a carrier without prior notice to the Commission.

(2) If a deviation proposed under this part, other than one under paragarph (c) (8) of this section, is to continue for not more than 30 days no notice to the Commission concerning it is required.

(3) If any deviation, other than one over an alternate route under paragraph (c) (8) of this section, is to continue for more than 30 days the carrier shall, not later than one day after the deviation operations are begun, give notice thereof to the Commission and others in the manner provided in subparagraph (5) of this paragraph giving the information therein required.

(4) When an alternate-route deviation under paragraph (c) (8) of this section is proposed the carrier shall give prior notice thereof to the Commission and to others in the manner provided in subparagraph (5) of this paragraph. A summary of such notice will be prepared by the Commission and published in the FEDERAL REGISTER and such deviation shall not under any circumstances be commenced until the elapse of 30 days after the date of such publication and if a protest against any such proposed deviation is filed within such 30-day period the proposed deviation shall not be commenced until the Commission has considered and overruled the protest and found that the proposed deviation meets the requirements of, and is permissible, under this part.

(5) If notice of a deviation proposed under this part is required by either subparagraph (3) or subparagraph (4) of this paragraph, it shall in the case of an irregular-route operation specify the point or points involved, describe the nature of the deviation, and give such other information as may be necessary to establish that the deviation is in fact authorized by this part, and in the case of a regular-route operation it shall contain:

(i) A complete description by highway designations of the carrier's authorized service route between the point of deviation and the point of return;

(ii) A complete description by highway designations of its proposed deviation route between the point of deviation and the point of return;

(iii) A complete description by highway designations of all segments of other specifically authorized service and alternate routes of the carrier adjacent either to the authorized service route from which deviation is to be made or to the proposed deviation route; and

(iv) Where the deviation is subject to a comparative distance limitation, the distance (actual mileage) over any proposed deviation route and also over the authorized regular service route between the points of deviation and return shall be stated. Such distances shall be computed not from municipal or commercial

zone limits but from actual junction points of the carrier's specifically authorized service route and the proposed deviation route, whether such junction points be within or without city limits, and shall include that portion of any specifically authorized alternate route which is embraced in any proposed alternate deviation route.

(6) The notice described in subparagraph (5) of this paragraph shall be accompanied by a map on which there shall be shown so much as may be practicable of the information required by that subparagraph and in the case of an alternate-route deviation under paragraph (c) (8) (i) or (ii) of this section, such map must clearly show in different colors the routes involved, including in each instance the official highway designations of the authorized regular service route from which deviation is proposed and other service routes of the carrier, if any, in the area, also the highway designations of the proposed deviation route and other specifically authorized alternate routes, if any, in the area, and the distances (actual mileage) between the points of deviation and return (the actual junctions) over the regular service route from which deviation is proposed and over the deviation route.

(7) The notice of an alternate-route deviation required by subparagraph (4) of this paragraph shall also contain a statement to the effect that the carrier filing it will continue to furnish reasonable and adequate service from and to all authorized points on its regular service route; that it will not serve any intermediate point or points on such deviation route; and that deviation from its authorized regular service route as proposed will not enable it to render a materially different service than that rendered over its regular service route or enable it to engage in transportation between any points between which operation is not practicable over its regular service route because of the circuity or otherwise.

(8) The notice of any deviation required by subparagraph (3) or (4) of this paragraph shall also contain a statement indicating that a copy thereof, accompanied by a map showing the information indicated above, has been served by mail or in person on the following, listed by names and addresses in each instance:

(i) All carriers which, after diligent inquiry, have been found to be competitive with the carrier's proposed operation over the deviation route.

(ii) The State board or official which has jurisdiction over motor carrier regulation in each State in or through which the proposed operations over the deviation route will be conducted.

(iii) The District Director or Directors of the Interstate Commerce Commission for the district in which the carrier is domiciled and for each district in or through which the proposed operations over the deviation route will be conducted.

(9) *Failure to give notice or defective notice.* Where a notice of a deviation or proposed deviation is required by subparagraph (3) or (4) of this paragraph and such notice is not timely filed and served on competing carriers and others as required by subparagraph (8) of this paragraph, any deviation operation begun prior to the actual filing and service of notice is unauthorized and where a notice though filed is defective for want of required information or insufficient service on competing carriers, or for any other reason, it shall be subject to rejection and if rejected any deviation operation covered thereby which has been begun shall immediately be discontinued and shall not be resumed until a sufficient notice has been filed, and served on interested parties as required by subparagraph (8) of this paragraph, and the carrier has been notified by the Commission that the operation may be resumed.

(10) The right to operate over a deviation route which is subject to these general conditions and requirements shall continue only so long as the carrier is performing, when required by this part, reasonable and adequate service over specifically authorized routes, and only so long as the conditions set forth in this rule are observed.

(e) *Protests and replies thereto.* Any person who considers that he is or will be adversely affected by a deviation described or proposed in any notice filed under paragraph (d) of this section, may file at any time a protest against such deviation. Such protest may be in the form of letter but shall contain a recital of facts and information showing protestant's interest and supporting his opinion that the facts and circumstances upon which the right to deviate depends are nonexistent, or have been incorrectly described, or that the carrier filing the deviation notice has not met the applicable conditions and requirements, and shall show that a copy thereof has been furnished to the carrier filing the notice. If such a protest is filed, the carrier which has filed the deviation notice may reply thereto within 20 days, after which the Commission will give due consideration to all facts of record or otherwise available to it in the particular case, including the notice and protest, and will make a determination in accordance therewith.

(f) *Commission may forbid deviation.* The Commission may forbid the commencement of operations over any deviation route under this part, or require discontinuance of such operations already commenced, whenever in its opinion such deviation results in inadequate service over specifically authorized routes, or is unreasonable, undesirable, or otherwise repugnant to the public interest, or is not in harmony with the general purpose and intent of this part.

§ 211.2 *Prior filings.* Motor carriers lawfully utilizing any deviation route or facility or facilities referred to herein pursuant to a prior notice heretofore filed in accordance with the provisions of any prior order heretofore entered under this part shall not be required to file any further notice with the Commission concerning the use of such route, facility, or facilities.

It is further ordered, That this order shall be effective on April 15, 1957, unless otherwise ordered in the interim, and that the revised rules and regulations, herein established shall continue in effect until the further order of the Commission.

Notice of this order shall be given to motor carriers and to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D. C., and by filing a copy thereof with the Director, Division of Federal Register.

(49 Stat. 546, as amended; 49 U. S. C. 304. Interprets or applies 49 Stat. 552, as amended; 553, as amended; 49 U. S. C. 308, 309)

By the Commission, Division 1.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 57-1531; Filed, Feb. 27, 1957; 8:59 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Bureau of Public Roads has filed an application, Serial No. Anchorage 033526, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining laws, but excluding the mineral leasing laws. The applicant desires the land for an Administrative Site.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

EUREKA AREA

From a point beginning at Bureau of Land Management corner Monument S 2926 C-1 on the line of the West Boundary of the Eureka Lodge property;

Thence S. 28° 47′ 00″ E. 102.4 to the centerline of the Glenn Highway;

Thence along the centerline of the Glenn Highway N. 60° 59′ 00″ E. 3,824.3 feet;

Thence along the centerline of the Glenn Highway N. 33° 02′ 00″ E. 2,263.1 feet to Corner No. 1, which is a point on the centerline of the Glenn Highway and the true Point of Beginning;

Thence by metes and bounds:

N. 56° 58′ 00″ W. 350 feet to corner No. 2;

N. 33° 02′ 00″ E. 700 feet to corner No. 3;

S. 56° 58′ 00″ E. 350 feet to corner No. 4 which is a point on the centerline of the Glenn Highway;

S. 33° 02′ 00″ W. 700 feet along the centerline of said highway to corner No. 1 and the Point of Beginning.

Containing 5.624 acres, more or less.

L. T. MAIN,
Acting Operations Supervisor.

[F. R. Doc. 57-1496; Filed, Feb. 27, 1957; 8:49 a. m.]

ALASKA

SMALL TRACT CLASSIFICATION ORDERS NO. 1 TO 112, INCLUSIVE; GENERAL AMENDMENT

FEBRUARY 19, 1957.

By virtue of the authority contained in the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a) as amended and pursuant to the authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (19 F. R. 2473) as amended, it is ordered as follows:

1. All competitive Small Tract Classification Order and Amendments issued between February 17, 1948 and July 18, 1956 by the Area Administrator, Area 4, and more recently by the Operations Supervisor, Bureau of Land Management, as follows are hereby amended where applicable to specify that annual rentals for recreation and residence sites shall be 1/20th of the appraised price of the tract with a minimum of $10.00 per tract per year.

Small Tract Classification Orders involved:

1–6, inclusive;
8–17, inclusive;
18 as corrected;
19 and amendment No. 1;
20–27, inclusive;
28, correction and amendments 1 and 2;
29 and amendment No. 1;
30–32, inclusive;
33, as amended;
34–37, inclusive;
38 and amendment No. 1;
39–47, inclusive;
48 as corrected;
49;
50 and amendment No. 1;
51;
53–60, inclusive;
61 and amendment No. 1;
62;
63 and amendment No. 1;
64;
65 as corrected;
66 as corrected;
67–69, inclusive;
70 and amendment No. 1 and 2;
71, as corrected;
72–73, inclusive;
74 and amendment No. 1;
75–76, inclusive;
77 and amendment No. 1;
78–85, inclusive;
86 and amendment No. 1 and 2;
87–112, inclusive.

2. The order shall take effect immediately.

L. T. MAIN,
Acting Operations Supervisor.

[F. R. Doc. 57-1497; Filed, Feb. 27, 1957; 8:49 a. m.]

UTAH

ORDER PROVIDING FOR OPENING OF PUBLIC LAND

FEBRUARY 19, 1957.

In exchanges of lands made under the provision of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended, the following described lands have been reconveyed to the United States:

SALT LAKE MERIDIAN

T. 9 N., R. 13 W.,
Sec. 3: All;
Sec. 9: All;
Sec. 11: All;
Sec. 15: All;
Sec. 17: All;
Sec. 19: All;
Sec. 23: All;
Sec. 25: All;
Sec. 27: All;
Sec. 29: All;
Sec. 31: All;
Sec. 33: All;
Sec. 35: All.
T. 10 N., R. 14 W.,
Sec. 1: All;
Sec. 3: All;
Sec. 5: All.
T. 10 N., R. 16 W.,
Sec. 1: Lots 1, 2, 3, 4, S½N½, SE¼;
Sec. 11: S½, NW¼;
Sec. 13: All;
Sec. 21: E½NW¼NW¼, NW¼NW¼NW¼;
Sec. 27: E½, NW¼.
T. 11 N., R. 12 W.,
Sec. 3: All;
Sec. 9: All;
Sec. 17: All;
Sec. 19: All.
T. 11 N., R. 13 W.,
Sec. 25: All.
T. 11 N., R. 14 W.,
Sec. 25: All;
Sec. 31: E½E½;
Sec. 33: All;
Sec. 35: All.
T. 12 N., R. 12 W.,
Sec. 35: All.
T. 13 N., R. 9 W.,
Sec. 32: W½.
T. 14 N., R. 11 W.,
Sec. 23: E½.
T. 10 S., R. 3 W.,
Sec. 22: E½SE¼.
T. 10 S., R. 4 W.,
Sec. 13: SW¼NW¼;
Sec. 15: SW¼SW¼;
Sec. 22: NW¼, N½NE¼, SW¼NE¼, N½SW¼, NW¼SE¼.
T. 17 S., R. 2 W.,
Sec. 2: E½SE¼;
Sec. 11: SW¼.
T. 17 S., R. 5 W.,
Sec. 11: SE¼SE¼;
Sec. 12: W½SW¼;
Sec. 14: SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 23: W½NE¼.
T. 19 S., R. 9 W.,
Sec. 19: All;
Sec. 20: All;
Sec. 30: All;
Sec. 31: NW¼, N½NE¼.
T. 19 S., R. 10 W.,
Sec. 13: All;
Sec. 14: SE¼NE¼, SE¼, SE¼SW¼;
Sec. 23: All;
Sec. 24: All;
Sec. 25: All.
T. 21 S., R. 17 W.,
Sec. 32: All;
Sec. 36: All.
T. 22 S., R. 6 W.,
Sec. 23: NE¼NW¼.
T. 23 S., R. 8 W.,
Sec. 5: S½;
Sec. 8: E½.
T. 24 S., R. 10 W.,
Sec. 16: SE¼;
Sec. 17: All;
Sec. 32: E½SE¼;
Sec. 33: All.
T. 37 S., R. 5 W.,
Sec. 22: NE¼SW¼.
T. 5 S., R. 22 E.,
Sec. 19: SE¼SW¼.

The above tracts aggregate 28,716.04 acres.

The minerals in the above-described lands were wholly or partly reserved by the grantors or by prior grantors, and any person acquiring any of these lands must accept title subject to such reservations. Information as to any mineral rights reconveyed to the United States is of record in the Land Office, 312 Federal Building, Salt Lake City, Utah.

The tracts described are widely scattered parcels and are desert or semi-desert in character.

No application for these lands will be allowed under the homestead, desert land, small tract, or any other nonmineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

Subject to any existing valid rights and the requirements of applicable law, the lands described above are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict,

and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, presented prior to 10:00 a. m. on March 27, 1957, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on June 26, 1957, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public land laws, other than those coming under paragraphs (1) and (2) above, and applications and offers under the mineral leasing laws, presented prior to 10:00 a. m. on June 26, 1957, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The land will be open to location under the United States mining laws, beginning 10:00 a. m. on June 26, 1957, providing locatable minerals have been reconveyed to the United States.

Persons claiming veteran's preference rights under paragraph a (2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Post Office Box 777, Salt Lake City, Utah.

VAL B. RICHMAN,
State Supervisor.

[F. R. Doc. 57-1498; Filed, Feb. 27, 1957; 8:49 a. m.]

[Montana 024448]

MONTANA

ORDER PROVIDING FOR THE OPENING OF PUBLIC LANDS

FEBRUARY 19, 1957.

In an exchange of lands made under the provisions of the act of March 20, 1922 (42 Stat. 465), as amended by the act of February 28, 1925 (43 Stat. 1090), the following described lands have been reconveyed to the United States:

MONTANA PRINCIPAL MERIDIAN

A tract of land comprising 75.23 acres, more or less, situated in the SW¼NW¼, N½SW¼, NW¼SE¼, Sec. 12, T. 9 S., R. 4 E., more particularly described by metes and bounds as follows: Beginning at a point on the west line of said Section 12, 10 chains north of the west ¼ corner thereof, thence S. 62° 26' E., 42.00 chains, thence S. 70° 00' E., 7.25 chains, thence S. 46° 00' E., 2.50 chains, thence S. 38° 00' E., 8.09 chains more or less to the south line of the NW¼SE¼, thence East along the south line of the NW¼SE¼ 9.15 chains more or less to the southeast corner thereof, thence North along the east line of the NW¼SE¼ 20.00 chains more or less to the northeast corner thereof, thence West along the north line of the NW¼SE¼ and the NE¼SW¼ 40.00 chains more or less to the northwest corner of the NE¼SW¼, thence North along the east line of the SW¼NW¼ 20.00 chains more or less to the northeast corner thereof, thence West along the north line of the SW¼NW¼ 20.00 chains more or less to the west line of Section 12, thence South along the west line of Sec. 12, 10.00 chains more or less to the place of beginning.

The area described totals 75.23 acres of public land.

Upon application of this order in the FEDERAL REGISTER, the land described shall be subject to operation of the public land laws relating to National Forests.

The land is within the exterior limits of the Gallatin National Forest, and is therefore not subject to the provisions of the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, granting preference rights to veterans of World War II or the Korean conflict and others.

Inquiries relating to these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 1245 North 29th Street, Billings, Montana.

THEO E. ANHDER,
Manager, Land Office.

[F. R. Doc. 57-1499; Filed, Feb. 27, 1957; 8:50 a. m.]

[Montana 024468]

MONTANA

NOTICE OF FILING OF PLAT OF SURVEY AND ORDER PROVIDING FOR OPENING OF PUBLIC LAND

FEBRUARY 21, 1957.

A plat of survey of the land described below will be officially filed in the Land Office at Billings, Montana, effective at 10:00 a. m. on March 29, 1957.

MONTANA PRINCIPAL MERIDIAN

T. 27 N., R. 56 E.
Sec. 3, Lot 14.

Area surveyed: 33.30 acres.
Plat of survey accepted April 6, 1955.

The above described land was formed by accretion along the Missouri River fronting Lot 10, Sec. 3, T. 27 N., R. 56 E., P. M., Montana. The land is level with deep sandy loam and supports a scattered growth of brush and willows. The land is suitable for the production of native forage plants or for limited crop production. The acreage of the area suitable for crop production is not adequate for an economic farming unit unless used in connection with other adjoining or nearby lands.

No application for these lands will be allowed under the homestead, desert land, small tract, or any other nonmineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

Subject to any existing valid rights and the requirements of applicable law, the lands described above are hereby opened to filing of applications and selections in accordance with the following:

Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

1. Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

2. All valid applications under the homestead, desert land, and small tract laws by qualified veterans of World War II or of the Korean conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m. on March 29, 1957, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on June 28, 1957, will be governed by the time of filing.

3. All valid applications and selections under the nonmineral public land laws, other than those coming under paragraphs "1" and "2" above, presented prior to 10:00 a. m. on June 28, 1957, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

Persons claiming veteran's preference rights under paragraph "2" above must enclose with their applications proper evidence of military or naval service, preferably a complete photo-copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference or equitable claims, must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 1245 North 29th Street, Billings, Montana.

THEO E. ANHDER,
Manager, Land Office.

[F. R. Doc. 57-1501; Filed, Feb. 27, 1957; 8:51 a. m.]

[Group 299]

ARIZONA

NOTICE OF FILING OF PLAT OF SURVEY AND ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

FEBRUARY 18, 1957.

Notice is given that the plat of survey accepted October 31, 1956, of T. 8 S., R. 31 E., G. & S. R. B. & M., Arizona, including lands hereinafter described, will be officially filed in the Land Office at Phoenix, Arizona, effective at 10:00 a. m. on the 35th day after the date of this notice:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 8 S., R. 31 E.,
Sec. 32, All.

Within the above-described area are 480 acres of public land.

Available data indicates this land to be rolling, with rocky soil.

Subject to valid existing rights, the State's title attached to the NE¼, Sec. 32, T. 8 S., R. 31 E. upon the acceptance of the plat of survey.

No application for the NW¼, and S½, Sec. 32, T. 8 S., R. 31 E. may be allowed under the homestead, small tract, desert land, or any other non-mineral public land laws, unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified. At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m. on March 26, 1957 will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on June 25, 1957, will be governed by the time of filing.

All valid applications and selections under the non-mineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on June 25, 1957, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

Persons claiming veterans' preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, U. S. Land Office, Bureau of Land Management, Phoenix, Arizona.

THOS. F. BRITT,
Manager.

[F. R. Doc. 57-1500; Filed, Feb. 27, 1957; 8:51 a. m.]

OREGON

ORDER PROVIDING FOR OPENING OF PUBLIC LAND

FEBRUARY 14, 1957.

Pursuant to Determination DA-401 Oregon, of the Federal Power Commission and in accordance with Order No. 541, section 2.5, of the Director, Bureau of Land Management, approved April 21, 1954 (19 F. R. 2473), it is ordered as follows:

1. The lands hereinafter described, so far as they are withdrawn and reserved for power purposes in Power Site Classification No. 276 of September 5, 1933, are hereby restored to disposition under the public land laws, subject to the provisions of section 24, of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818), as amended.

WILLAMETTE MERIDIAN, OREGON

T. 1 N., R. 9 E.,
Sec. 1, Lot 7.

43.50 acres.

2. The public land is located near the West Fork of Hood River within one and one-half miles of Dee, Oregon. The lands are on a fairly steep hillside unsuited for cultivation. The vegetative cover consists of a stand of Douglas fir trees, and underbrush. The land is well-suited for the production of timber and adjoins the Mt. Hood National Forest.

3. No application will be allowed under homestead, desert land, small tract, or other nonmineral public land laws, unless the lands have already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. The lands described shall be subject to application by the State of Oregon for a period of 90 days from the date of this order for right-of-way for public highways or as a source of material for construction and maintenance of such highways in accordance with and subject to provisions of section 24, of the Federal Power Act, as amended.

5. Subject to any existing valid rights and the requirements of applicable laws, the lands described in Paragraph 1 are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the homestead, desert land, and small tract laws by qualified veterans of World War II or the Korean conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m. on March 25, 1957, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on June 25, 1957, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on June 27, 1957, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been opened to location and entry under the United States Mining Laws pursuant to the act of August 11, 1955 (69 Stat. 683; 30 U. S. C. 621), and to applications and offers under the mineral leasing laws.

6. Persons claiming veteran's preference rights under paragraph a (2) above must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

7. Inquiries concerning the above lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 1001

N. E. Lloyd Boulevard, P. O. Box 3861, Portland 8, Oregon.

VIRGIL T. HEATH,
State Supervisor.

FEBRUARY 14, 1957.

[F. R. Doc. 57-1502; Filed, Feb. 27, 1957; 8:51 a. m.]

National Park Service

[Order 23]

CERTAIN CHIEFS AND REGIONAL ADMINISTRATIVE OFFICERS

DELEGATION OF AUTHORITY TO EXECUTE AND APPROVE CERTAIN CONTRACTS

FEBRUARY 1, 1957.

SECTION 1. *Chiefs, Western and Eastern Offices, Division of Design and Construction.* The Chiefs, Western and Eastern Offices, Division of Design and Construction, are authorized to execute and approve contracts not in excess of $50,000 for supplies, equipment, or services required to carry out the functions of their offices in conformity with applicable regulations and statutory authority and subject to availability of appropriations.

SEC. 2. *Regional Administrative Officers, Region Four and Five Officers.* The Regional Administrative Officers, Region Four and Five Offices, are authorized to execute and approve contracts not in excess of $50,000 for supplies, equipment or service required to carry out the functions of the Western and Eastern Offices, Division of Design and Construction, respectively, in conformity with applicable regulations and statutory authority and subject to availibility of appropriations.

SEC. 3. *Ratification.* Any action taken by the above-mentioned officials between December 1, 1954, and the date of this order is hereby ratified.

CONRAD L. WIRTH,
Director.

[F. R. Doc. 57-1504; Filed, Feb. 27, 1957; 8:52 a. m.]

[Mount McKinley National Park Order 1]

ASSISTANT SUPERINTENDENT AND ADMINISTRATIVE ASSISTANT

DELEGATION OF AUTHORITY TO EXECUTE AND APPROVE CERTAIN CONTRACTS

FEBRUARY 4, 1957.

SECTION 1. *Assistant Superintendent.* The Assistant Superintendent may execute and approve contracts not in excess of $50,000 for construction, supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Assistant Superintendent in behalf of any office or area under the supervision of the Superintendent of Mount McKinley National Park.

SEC. 2. *Administrative Assistant.* The Administrative Assistant may execute and approve contracts not in excess of $10,000 for construction, supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Administrative Assistant in behalf of any office or area under the supervision of the Superintendent of Mount McKinley National Park.

(National Park Service Order No. 14, Amendment 9 (22 F. R. 270, January 12, 1957) Amending Paragraph 1 (i) and Region Four Order No. 3, March 8, 1956 (21 F. R. 1494))

DUANE D. JACOBS,
Superintendent,
Mount McKinley National Park.

[F. R. Doc. 57-1503; Filed, Feb. 27, 1957; 8:52 a. m.]

Office of the Secretary

[Order No. 2508, Amdt. 18]

BUREAU OF INDIAN AFFAIRS

DELEGATION OF AUTHORITY WITH RESPECT TO FUNDS AND FISCAL MATTERS

SEC. 11. *Funds and Fiscal Matters of* Order No. 2508, as amended (14 F. R. 258; 16 F. R. 473, 11620; 19 F. R. 34, 4585; 20 F. R. 167) is further amended by addition of a new paragraph to read as follows:

(3) (1) The approval of mortgages of trust chattels and crops on trust or restricted land of an Indian, and assignments of income from trust or restricted land of an Indian, except income from restricted land of heirs or devisees of members of the Five Civilized Tribes, Oklahoma, as security for a loan by any lender.

(2) The approval of assignments of any trust property of an Indian, except land, and authority to act as the Indian's attorney in fact to execute leases on any trust land in which the Indian borrower may have an interest, and to apply the rentals on the Indian's indebtedness, for a loan made pursuant to 25 CFR Parts 21, 23, and 28.

(3) The release of interests of the United States in any trust or restricted property of an Indian, except land.

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 20, 1957.

[F. R. Doc. 57-1494; Filed, Feb. 27, 1957; 8:48 a. m.]

[Order No. 2508, Amdt. 17]

BUREAU OF INDIAN AFFAIRS

DELEGATION OF AUTHORITY WITH RESPECT TO OPERATION OF U. S. M. S. "NORTH STAR"

Order No. 2508, as amended, is further amended by addition of a new section to read as follows:

SEC. 32. *Operation of U. S. M. S. "North Star".* The Commissioner of Indian Affairs may exercise all of the authorities contained in 25 CFR Part 3.

FRED G. AANDAHL,
Acting Secretary of the Interior.

FEBRUARY 19, 1957.

[F. R. Doc. 57-1493; Filed, Feb. 27, 1957; 8:48 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

KENTUCKY

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U. S. C. 1148a-2 (a)), as amended, it has been determined that in the following counties in the State of Kentucky, a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

KENTUCKY

Bell	Lee
Breathitt	Leslie
Clay	Letcher
Floyd	Martin
Harlan	Owsley
Johnson	Perry
Knott	Pike
Knox	Whitley

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after December 31, 1957, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D. C., this 25th day of February 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-1529; Filed, Feb. 27, 1957; 8:58 a. m.]

NEBRASKA

DISASTER ASSISTANCE DELINEATION OF DROUGHT AREAS

Pursuant to Public Law 875, 81st Congress, the President determined on July 19, 1956, that a major disaster occasioned by drought existed in the State of Nebraska.

Pursuant to the authority delegated to me by the Administrator, Federal Civil Defense Administration (18 F. R. 4609; 19 F. R. 2148, 5364), and for the purposes of section 2 (d) of Public Law 38, 81st Congress, as amended by Public Law 115, 83d Congress, and section 301 of Public Law 480, 83d Congress, Adams County, Nebraska, was determined on February 15, 1957, to be affected by the above-mentioned major disaster.

Done at Washington, D. C., this 25th day of February 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-1487; Filed, Feb. 27, 1957; 8:46 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11685, etc.; FCC 57M-154]

POLK RADIO, INC., ET AL.

ORDER CONTINUING HEARING

In re applications of Polk Radio, Incorporated, Lakeland, Florida; Docket No. 11685, File No. BP-10136; Duane F. McConnell, Winter Haven, Florida; Docket No. 11686, File No. BP-10400; E. D. Covington, Jr., Winter Garden, Florida; Docket No. 11813, File No. BP-10571; for construction permits.

It appearing that Polk, McConnell and Covington are now engaged in negotiations which, if consummated, will obviate the necessity of further proceedings in the above-entitled matter, and since all participants have consented to the following continuance;

It is ordered, This 21st day of February 1957, that hearing in the above-entitled matter now scheduled for February 26, 1957, is continued to March 26, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1515; Filed, Feb. 27, 1957; 8:55 a. m.]

[Docket No. 11912; FCC 57M-153]

CRAIG SIEGFRIED

NOTICE OF PRE-HEARING CONFERENCE

In re application of Craig Siegfried, Falls City, Nebraska; Docket No. 11912, File No. BP-10265; for construction permit.

Notice is hereby given that a pre-hearing conference will be held in the above-entitled proceeding at 10:00 o'clock a. m., on Monday, March 4, 1957, in the offices of this Commission, Washington, D. C.

Dated this 21st day of February 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1516; Filed, Feb. 27, 1957; 8:55 a. m.]

[Docket No. 11932; FCC 57M-147]

NEW JERSEY EXCHANGES, INC. (KEC738)

NOTICE OF PRE-HEARING CONFERENCE

In the matter of the application of New Jersey Exchanges, Inc. (KEC738), Docket No. 11932, File No. 2379-C2-P-56; for a construction permit to establish a new station for two-way communications in the Domestic Public Land Mobile Radio Service at Ridgewood, New Jersey.

A pre-hearing conference in the above-entitled proceeding will be held on Thursday, February 28, 1957, beginning at 10:00 a. m. in the offices of the Commission, Washington, D. C. This conference is called pursuant to the provisions of § 1.813 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered, This the 20th day of February 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1517; Filed, Feb. 27, 1957; 8:55 a. m.]

[Docket Nos. 11934, 11935; FCC 57M-150]

TEXAS TECHNOLOGICAL COLLEGE AND C. L. TRIGG

ORDER SCHEDULING HEARING

In re applications of Texas Technological College, Lubbock, Texas; Docket No. 11934, File No. BPCT-2183; C. L. Trigg, Lubbock, Texas; Docket No. 11935, File No. BPCT-2185; for construction permits for new television stations.

It is ordered, This 21st day of February 1957, that Millard F. French will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 24, 1957, in Washington, D. C.

Released: February 25, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1518; Filed, Feb. 27, 1957; 8:56 a. m.]

[Docket Nos. 11936, 11937; FCC 57M-151]

GEORGE A. MAYORAL ET AL.

ORDER SCHEDULING HEARING

In re applications of George A. Mayoral and William Cortada, a partnership; Ponce, Puerto Rico; Docket No. 11936, File No. BPCT-2049; Portorican-American Broadcasting Company, Inc., Ponce, Puerto Rico; Docket No. 11937, File No. BPCT-2228; for construction permits for new television broadcast stations.

It is ordered, This 21st day of February 1957, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 24, 1957, in Washington, D. C.

Released: February 25, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1519; Filed, Feb. 27, 1957; 8:56 a. m.]

[Docket Nos. 11938, 11939; FCC 57M-152]

GOLD COAST BROADCASTERS AND GOLD COAST RADIO, INC.

ORDER SCHEDULING HEARING

In re applications of James C. Dean, C. Robert Clark and Charles W. Stone, d/b as Gold Coast Broadcasters, Pompano Beach, Florida; Docket No. 11938, File No. BP-10631; Gold Coast Radio, Inc., Pompano Beach, Florida; Docket No. 11939, File No. BP-10782; for Construction permits.

It is ordered, This 21st day of February 1957, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 24, 1957, in Washington, D. C.

Released: February 25, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary,

[F. R. Doc. 57-1520; Filed, Feb. 27, 1957; 8:56 a. m.]

[Docket Nos. 11858, 11859; FCC 57M-146]

KEN-SELL, INC., AND FLORIDA KEYS BROADCASTING CORP.

NOTICE OF PREHEARING CONFERENCE

In re applications of Ken-Sell, Inc., Key West, Florida; Docket No. 11858, File No. BP-10242; Florida Keys Broadcasting Corporation, Key West, Florida; Docket No. 11859, File No. BP-10603; for construction permits.

A prehearing conference will be held in the above-entitled matter at the offices of the Commission on Thursday, March 7, 1957, at 10:00 a. m.

Dated: February 20, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1481; Filed, Feb. 27, 1957; 8:45 a. m.]

[Docket No. 11878; FCC 57M-140]

MOBILE COMMUNICATIONS

NOTICE OF PREHEARING CONFERENCE

In the matter of the application of J. B. Wathen, III, d/b as Mobile Communications, Docket No. 11878, File No. 2184-C2-P-56; for a construction permit to establish a new station for two-way communications in the Domestic Public Land Mobile Radio Service at Louisville, Kentucky.

A pre-hearing conference will be held in the above-entitled matter at the offices of the Commission on Friday, March 1, 1957, at 10:00 a. m.

Dated: February 19, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1482; Filed, Feb. 27, 1957; 8:45 a. m.]

[Docket No. 11917 etc.; FCC 57M-145]

INDEPENDENT BROADCASTERS ET AL.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of C. E. Wilson and P. D. Jackson, d/b as Independent Broadcasters, Redding, California; Docket No.

11917, File No. BP-10313; Donnelly C. Reeves, John E. Griffin and A. Judson Sturtevant, Jr., d/b as Placer Broadcasters, Auburn, California; Docket No. 11918, File No. BP-10560; Charles Everett Halstead, Jr., tr/as Golden State Broadcasters, Auburn, California; Docket No. 11919, File No. BP-10714; for construction permits.

It is ordered, This 19th day of February, 1957, that a prehearing conference in the above-entitled proceeding will be held in the offices of the Commission, Washington, D. C., commencing at 2:00 p. m., Friday, March 1, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1483; Filed, Feb. 27, 1957; 8:45 a. m.]

[Docket Nos. 11920, 11921; FCC 57M-143]

JANE A. ROBERTS AND BELLEVUE BROADCASTERS

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of Jane A. Roberts, Bothall, Washington; Docket No. 11920, File No. BP-10383; F. Kemper Freeman and Florence G. Hayes d/b as Bellevue Broadcasters, Bellevue, Washington; Docket No. 11921, File No. BP-10564; for construction permits.

It is ordered, This 19th day of February, 1957, that a prehearing conference in the above-entitled proceeding will be held in the offices of the Commission, Washington, D. C., commencing at 2:00 p. m., Friday, March 8, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-1484; Filed, Feb. 27, 1957; 8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-12037]

OHIO OIL CO.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

FEBRUARY 21, 1957.

The Ohio Oil Company (Ohio Oil) on January 25, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.
Purchaser: United Gas Pipe Line Company.
Rate schedule designation: Supplement No. 4 to Ohio Oil's FPC Gas Rate Schedule No. 15.
Effective date: [1] February 25, 1957.

In support of the proposed increase, Ohio Oil states that the contract was entered into after arm's-length negotiations with consideration given to the volume of gas to be delivered during the contract term, the current and future demanded prices for similar gas, the cost of finding and replacing the gas sold with new gas and the long term commitment.

The increased rate and charge proposed in the aforesaid filing has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's rules and regulations (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates and charges; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until July 25, 1957, and until such further time as it is made effective in the manner presented by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.[2]

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-1505; Filed, Feb. 27, 1957; 8:52 a. m.]

[1] The stated effective date is the first day after expiration of the thirty days' notice, or the effective date proposed by Ohio Oil, if later.

[2] Commissioner Digby dissenting.

[Docket No. G-12045]

OHIO OIL CO. ET AL.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

FEBRUARY 21, 1957.

The Ohio Oil Company et al., (Ohio Oil) on January 29, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change undated.
Purchaser: Louisiana Nevada Transit Company.
Rate schedule designation: Supplement No. 3 to Ohio Oil's FPC Gas Rate Schedule No. 18.
Effective date: [1] March 1, 1957.

In support of the proposed increase, Ohio Oil cites the contract provision providing for redetermination of the rate every three years based on the weighted average price paid for gas in northern Louisiana during the one-year period preceding the particular three-year period and states that the proposed rate results from such redetermination as of October 26, 1954. Ohio Oil also lists six rate increases in northern Louisiana accepted by the Commission.

The increased rate and charge proposed in the aforesaid filing has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's rules and regulations (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed changes in rates and charges; and pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until August 1, 1957, and until such further time as it is made effective in the manner presented by the Natural Gas Act.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-1506; Filed, Feb. 27, 1957; 8:52 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 4251 etc.]

GREAT LAKES LOCAL SERVICE INVESTIGATION

NOTICE OF HEARING

Notice is hereby given that the hearing in the above-entitled proceeding will be held before Examiner Ferdinand D. Moran at three sessions as follows:

(a) The first to begin on April 23, 1957, at 10 a. m., in the New Lansing

[1] The stated effective date is the first day after expiration of the required thirty days notic, or the effective date proposed by Ohio Oil if later.

Civic Center, 505 W. Allegan Street, Lansing, Michigan;

(b) The second to begin April 29, 1957, at 10 a. m., in the Council Chambers, Second Floor, City Hall, Broad and Front Streets, Columbus, Ohio; and

(c) The third to begin May 21, 1957, at 10 a. m. (daylight saving time), in Room E-224, Temporary Building No. 5, 16th Street and Constitution Avenue NW., Washington, D. C.

Dated at Washington, D. C., February 21, 1957.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F. R. Doc. 57-1530; Filed, Feb. 27, 1957; 8:59 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3530]

PITTSBURGH RAILWAYS CO.

NOTICE OF FILING OF APPLICATION REGARDING PROPOSED ISSUE AND SALE OF PURCHASE MONEY BOND

FEBRUARY 21, 1957.

Notice is hereby given that Pittsburgh Railways Company ("Pittsburgh"), a non-utility subsidiary of Standard Gas and Electric Company, a registered holding company, has filed an application pursuant to the Public Utility Holding Company Act of 1935 ("act"). Applicant designates section 6 (b) of the act as applicable to the proposed transaction.

All interested persons are referred to the application on file in the office of the Commission for a statement of the transaction therein proposed, which is summarized as follows:

Pittsburgh proposes to issue a 15-year purchase money bond in the principal amount of $280,000 and bearing interest at the rate of 4½ percent per annum. The unpaid balance of the bond may be anticipated, without penalty, on any quarter annual payment date. The bond will be issued to Navarro Corporation, a contractor doing business in Pittsburgh, Pennsylvania, as part payment for a garage building being constructed by said contractor and needed by Pittsburgh for storage, servicing and maintenance of its buses and said bond will be secured by a mortgage on said property. Competitive bidding was observed in awarding the construction contract.

The application states that there are no fees or commissions payable on account of the issuance of said bond or mortgage. There are, however, Federal Internal Revenue Documentary Stamps required in the amount of $308 and Pittsburgh has agreed to pay all of the realty transfer taxes involved in the transaction and certain expenses, including attorneys fees, incurred by Navarro Corporation in connection with the transaction estimated not to exceed $12,000. Estimates of said expenses incurred by Navarro Corporation and of the fees and expenses of all counsel, including the fees and expenses of counsel for Navarro, in connection with this transaction will be filed by amendment.

Subject to certain conditions, the Pennsylvania Public Utilities Commission has registered the Securities Certificate of Pittsburgh relating to the issuance of said bond and mortgage.

Notice is further given that any interested person may, not later than March 12, 1957, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the Commission may grant the application as amended or as it may be further amended, pursuant to the provisions of Rule U-23 promulgated under the act, or the Commission may grant exemption from its rules as provided by Rules U-20 (a) and U-100 thereof, or take such action as may be deemed appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1510; Filed, Feb. 27, 1957; 8:54 a. m.]

[File No. 70-3558]

CENTRAL VERMONT PUBLIC SERVICE CORP.

NOTICE OF FILING OF APPLICATION REGARDING PROPOSED ACQUISITION OF COMMON STOCK OF NEWLY ORGANIZED SUBSIDIARY

FEBRUARY 21, 1957.

Notice is hereby given that Central Vermont Public Service Corporation ("Central Vermont"), an exempt public utility holding-operating company, has filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("act"), an application, regarding a proposal to acquire 1,730 shares (86.50 percent) of the initial issue of the $100 par value common stock of Vermont Electric Power Company, Inc. ("Vepco"), a newly organized electric transmission company. Applicant has designated sections 9 (a) (2) and 10 of the act as applicable to the proposed acquisition.

All interested persons are referred to the application on file at the office of this Commission for a statement of the transactions therein proposed and the reasons therefor, which are summarized as follows:

The State of Vermont, acting through the Public Service Commission of Vermont, has entered into a contract, dated January 25, 1956, with the Power Authority of the State of New York for the purchase of up to 100,000 kw of firm power to be produced by the St. Lawrence River Project ("St. Lawrence Power"), and to be delivered at three points on the New York-Vermont State line.

Approximately 55 percent to 60 percent of the present power requirements of the State of Vermont is produced by generating facilities located within the State. The remainder is purchased from outside sources, a large part of which is purchased from New England Power Company, a subsidiary of New England Electric System, a registered holding company. It is the purpose of the State of Vermont, acting through the Public Service Commission, to distribute the purchased St. Lawrence power equitably among all of the electric distribution companies and agencies operating in the State. To do so will require the construction of new and heavier transmission facilities, to be superimposed upon and supplemented by existing facilities. The cost of such new facilities is presently estimated at between $10,000,000 and $15,000,000, which it is presently contemplated will be financed on a basis of 5 percent minimum and a 15 percent maximum of equity capital.

Central Vermont, Green Mountain Power Corporation ("Green Mountain") and Citizens Utilities Company ("Citizens"), propose, subject to the right of other electric companies who so desire to participate in the ownership thereof, to utilize Vepco, a newly organized company, to construct, own and operate the new transmission facilities, and to enter into a contract with the State of Vermont, acting through the Public Service Commission, to transmit within Vermont the St. Lawrence power from the New York-Vermont State line to the points of delivery to the various electric distribution companies and agencies within Vermont, in accordance with allocations thereof by the Public Service Commission of Vermont.

Initially, Vepco proposes to issue and sell 2,000 shares of its $100 par value common stock to provide funds to enable it to complete engineering studies initiated by Central Vermont and the other participating utilities, to negotiate the transmission contract with the State of Vermont, to conduct negotiations with respect to the financing of Vepco and the sale of debt securities thereof, and the acquisition of materials and supplies requisite for the construction of the new transmission facilities. Of the 2,000 shares to be issued by Vepco, 1,730 shares (86.50 percent), including 7 of the 10 organization shares to be issued to the directors of Vepco are to be acquired by Central Vermont, 178 shares (8.90 percent) by Green Mountain, and 89 shares (4.45 percent) by Citizens.

Central Vermont proposes to enter into a contract with Green Mountain, Citizens and Vepco, which will provide for the purchase by Central Vermont, Green Mountain and Citizens of additional common stock of Vepco in the same proportions as the initial purchase, subject to the provisions permitting other electric distributing companies to participate in the ownership of Vepco. Any such acquisition of additional common stock by Central Vermont will be the subject of a further application and the approval of this Commission.

The application states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed acquisition of Vepco stock by Central Vermont. It is also stated that the Public Service Commission of Ver-

mont has jurisdiction over the proposed issue and sale of common stock by Vepco, and that an order of that Commission is to be filed herein.

The fees and expenses to be incurred by Central Vermont in connection with the proposed acquisition are estimated at $750 including legal fees and expenses of $500.

Notice is further given that any interested person may, not later than March 13, 1957, request that a hearing be held in respect of the application, stating his interest, the reasons for such request, and the issues of fact or law which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the application, as filed or as it may be amended, may be granted, as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may grant exemption from its Rules, as provided in Rules U-20 (a) and U-100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1508; Filed, Feb. 27, 1957; 8:53 a. m.]

[File No. 70-3563]

PENNSYLVANIA POWER CO. AND OHIO EDISON CO.

NOTICE OF PROPOSED ISSUE AND SALE OF COMMON STOCK BY SUBSIDIARY AND ACQUISITION THEREOF BY HOLDING COMPANY

FEBRUARY 21, 1957.

Notice is hereby given that Ohio Edison Company ("Ohio"), a registered holding company and a public-utility company, and its subsidiary Pennsylvania Power Company ("Pennsylvania"), a public-utility company all of whose outstanding common stock is owned by Ohio, have filed with this Commission a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 6 (b), 9 (a), 10, and 12 (f) of the act and rule U-43 thereunder as applicable to the proposed transactions, which are summarized as follows:

Pennsylvania proposes to issue and sell, and Ohio proposes to buy, 70,000 shares of Pennsylvania's authorized and unissued Common Stock (par value $30 per share) for a cash consideration of $2,100,000.

Pennsylvania will apply the proceeds of such sale to construction expenditures or in reimbursement of its treasury therefor. Pennsylvania's 1957 construction expenditures are estimated at $13,000,000, and its cash requirements will also make necessary its issue and sale during 1957 of approximately $7,000,000 principal amount of First Mortgage Bonds, to be made the subject of a later filing.

It is stated that the only other regulatory commission having jurisdiction in the premises is the Pennsylvania Public Utility Commission, the regulatory commission of the State in which Pennsylvania is organized and operating; that such State commission has jurisdiction over the issue and sale of Common Stock by Pennsylvania, and that a copy of its order with respect thereto will be filed by amendment.

The fees and expenses to be incurred in the matter will be paid by Pennsylvania, as follows:

Federal original issue tax	$2,310
State excise tax on increase of stated capital	4,200
Legal fees, Winthrop, Stimson, Putnam & Roberts	1,000
Miscellaneous	200
Total	7,710

Notice is further given that any interested person may, not later than March 11, 1957 at 5:30 p. m., request the Commission in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided by Rule U-23 of the rules and regulations promulgated under the act, or the Commission may grant exemption from its rules as provided in Rules U-20 (a) and U-100 or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1511; Filed, Feb. 27, 1957; 8:54 a. m.]

[File No. 1-3679]

KROY OILS, LTD.

ORDER SUMMARILY SUSPENDING TRADING

FEBRUARY 21, 1957.

In the matter of trading on the American Stock Exchange in the 20 cent par value Capital Stock of Kroy Oils Limited, File No. 1-3679.

I. The 20 cent par value Capital Stock of Kroy Oils Limited, an Alberta corporation (hereinafter called "registrant"), is listed and registered on the American Stock Exchange, a national securities exchange (hereinafter called the "exchange").

II. The Commission on November 2, 1956, issued its order and notice of hearing under section 19 (a) (2) of the Securities Exchange Act of 1934 (hereinafter called "the act") to determine at a hearing to be held on November 20, 1956, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the Capital Stock of registrant on the exchange for failure to comply with section 13 of the act and the rules and regulations adopted thereunder, in that the Commission has reason to believe that a current report for the month of May 1956, on Form 8-K, filed by registrant with the Commission was false and misleading in certain respects set forth in said order. On February 12, 1957, the Commission issued its order summarily suspending trading of said securities on the exchange pursuant to section 19 (a) (4) of the act for the reasons set forth in said order to prevent fraudulent, deceptive or manipulative acts or practices for a period of ten days from February 13, 1957, to February 22, 1957, inclusive.

III. On November 7, 1956, counsel representing registrant requested a postponement of the hearing under section 19 (a) (2) of the act in order to enable him to prepare for the hearing. Pursuant to this request, the Commission on November 7, 1956, issued its order postponing the date of said hearing to November 26, 1956. Said hearing has commenced but has not yet been concluded by Commission order or decision.

IV. The Commission has reason to believe that the false report filed by registrant as alleged in the order and notice of hearing referred to in paragraph II and the relationship between registrant and Great Sweet Grass Oils Limited, also subject to an order issued concurrently herewith under section 19 (a) (4) of the act, and also subject to an order and notice of hearing under section 19 (a) (2) of the act, which hearing has been consolidated with the hearing referred to in paragraph III, are such as to cause widespread confusion and uncertainty in the market for registrant's shares. Under the circumstances recited in this order, the Commission is of the opinion that it would be impossible for the investing public to reach an informed judgment at this time as to the value of registrant's securities or for trading in such securities to be conducted in an orderly and equitable manner.

V. The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on the exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the result that it will be unlawful under section 15 (c) (2) of the act and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange.

It is ordered, Pursuant to section 19 (a) (4) of the act that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices for a

period of ten days from February 23, 1957, to March 4, 1957, inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1512; Filed, Feb. 27, 1957; 8:54 a. m.]

[File No. 1-3827]

GREAT SWEET GRASS OILS, LTD.

ORDER SUMMARILY SUSPENDING TRADING

FEBRUARY 21, 1957.

In the matter of trading on the American Stock Exchange in the $1.00 par value Capital Stock of Great Sweet Grass Oils Limited, File No. 1-3827.

I. The $1.00 par value Capital Stock of Great Sweet Grass Oils Limited (hereinafter called "registrant") is listed and registered on the American Stock Exchange, a national securities exchange (hereinafter called "the exchange").

II. The Commission on October 19, 1956, issued its order and notice of hearing under section 19 (a) (2) of the Securities Exchange Act of 1934 (hereinafter called "the act"), and on October 24, 1956, issued its amended order and notice of hearing under the act to determine at a hearing to be held November 13, 1956, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the Capital Stock of registrant on the exchange for failure to comply with section 13 of the act and the rules and regulations thereunder, in that the Commission had reason to believe that the reports filed by registrant on Form 8-K and Form 10-K were false and misleading in certain respects set forth in said orders. On October 31, 1956, the Commission issued its second amended order and notice of hearing under section 19 (a) (2) of the act restating the allegations in the original and amended orders and including allegations that the Commission had reason to believe that the registrant's current report on Form 8-K for the month of December, 1955, and amendments thereto, and that registrant's annual report on Form 10-K for its fiscal year ended December 31, 1955, and amendments thereto, were false and misleading in additional respects set forth in said order. On November 16, 1956, the Commission issued its third amended order and notice of hearing under section 19 (a) (2) of the act restating the allegations in the original and amended orders and including allegations that the Commission had reason to believe that the registrant's current report on Form 8-K for the month of August, 1955, was false and misleading in certain respects set forth in said order, and that the Form 8-K report for the month of December, 1955, and the Form 10-K report for the fiscal year ended December 31, 1955 were false and misleading in additional respects set forth in said order. On February 12, 1957, the Commission issued its order summarily suspending trading pursuant to section 19 (a) (4) of the act in said securities on the exchange for the reasons set forth in said order to prevent fraudulent, deceptive and manipulative acts or practices from February 13, 1957, to February 22, 1957, inclusive.

III. On November 7, 1956, counsel representing registrant requested a postponement of the hearing under section 19 (a) (2) of the act in order to enable him to prepare for the hearing. Pursuant to this request, the Commission on November 7, 1956, issued its order postponing the date of said hearing to November 26, 1956. Said hearing has commenced but has not yet been concluded by Commission order or decision.

IV. The Commission has reason to believe that the false reports filed by registrant as alleged in the orders and notices of hearing referred to in paragraph II and the relationship between registrant and Kroy Oils Limited, also subject to an order issued concurrently herewith under section 19 (a) (4) of the act, and also subject to an order and notice of hearing under section 19 (a) (2) of the act, which hearing has been consolidated with the hearing referred to in paragraph III, are such as to cause widespread confusion and uncertainty in the market for registrant's shares. Under the circumstances recited in this order, the Commission is of the opinion that it would be impossible for the investing public to reach an informed judgment at this time as to the value of registrant's securities or for trading in such securities to be conducted in an orderly and equitable manner.

V. The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on the exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the result that it will be unlawful under section 15 (c) (2) of the act and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange.

It is ordered, Pursuant to section 19 (a) (4) of the act that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices for a period of ten days from February 23, 1957, to March 4, 1957, inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1513; Filed, Feb. 27, 1957; 8:54 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

NORBERTO SECKEL ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Norberto Seckel, Gertrud Engel, Ricardo Seckel, Fernando Friedmann and Francisco Friedmann, all of Santiago, Chile, Claim No. 62906, Vesting Order No. 8711, $220.31 in the Treasury of the United States payable jointly to the claimants.

Executed at Washington, D. C., on February 18, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 57-1523; Filed, Feb. 27, 1957; 8:57 a. m.]

STATE OF NETHERLANDS FOR THE BENEFIT OF NATHAN VAN GELDERE ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: (Cash in the Treasury of the United States as noted below and all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in the securities described below.)

Nathan van Geldere, Anna de Wit, Jansje and Margarethe de Korte, Marianna Zilversmit, Ludwig Knip, Johnny Heilbron, Sara, Abraham and Jacob Blaaser, Jillis de Bruin, Daniel Rietkerk, Carolina Lobstein, Meijer Godschalk and Anna Baer, L. S. Claim No. 422, Cities Service Company 5/58 Debenture No. 21538, in the principal amount of $1,000.

Julius Cohen, L. S. Claim No. 509, $11,307.84.

S. van der Kar, L. S. Claim No. 526, $1,364.47.

Franz Mautner, L. S. Claim No. 596, Kansas City Southern Railway Co. 5/50 Bond No. 861, in the principal amount of $1,000.

David Sanders, Antje Frankfort, Izaak Meijers, Marianna Zilversmit, Geertruida Speelman, Marianne, Charles, Louise and Mary Schielaar, Nasje Sleutelberg, Rosette de Heer and Betje Gozland, L. S. Claim No. 863, $231.60.

Vesting Order No. 18521.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on February 18, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 57-1524; Filed, Feb. 27, 1957; 8:57 a. m.]