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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1973, and specifies how they are affected.

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Title 3—The President

PROCLAMATION 4187

National Inventors' Day

By the President of the United States of America

A Proclamation

In 1646, the Massachusetts General Court granted an immigrant ironworker named Joseph Jenks the first patent for machinery issued in what was then British North America—a 14 year monopoly on watermills for the "speedy dispatch of much worke with few hands." That was the beginning of what has become a long and proud tradition in this country.

The creators of our Republic, themselves the inventors of a new form of government, recognized the important role which inventors would play in achieving national progress and, accordingly, gave the Congress the Constitutional authority to grant inventors, for limited times, the exclusive rights to their discoveries. In 1790, Congress did that by establishing the United States Patent System and granting Samuel Hopkins the first patent.

History is filled with evidence of the success of this system. The names of Whitney, McCormick, Morse, Bell, and Edison and the cotton gin, the reaper, the telegraph and telephone, the light bulb, the airplane, transistor, television, are familiar examples of American inventiveness.

Ours is a proud history of technological achievement, but, as I noted in my message to the Congress on Science and Technology last March, it is not enough to take pride in the achievements of the past. Great and complex challenges at home and abroad demand further progress and new technology. Today, as in our past, the inventor must play a crucial role in determining whether we meet these challenges.

In honor of the important role played by inventors in promoting progress in the useful arts and in recognition of the invaluable contribution of inventors to the welfare of our people, the Congress has by Public Law 92–457 designated February 11, 1973 as National Inventors' Day.

It is particularly appropriate to have chosen February 11 as the day on which to honor all inventors in this manner, since it is the birthday of one of our Nation's most outstanding inventors, Thomas Alva Edison, to whom more than 1,000 patents were issued for his various inventions.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, as authorized and requested by the Congress,

call upon the people of the United States to join in celebrating National Inventors' Day with appropriate ceremonies and activities honoring the important role played by inventors in promoting progress in useful arts and in recognition of their invaluable contribution to our welfare.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of February, in the year of our Lord nineteen hundred and seventy-three, and of the Independence of the United States of America the one hundred ninety-seventh.

Richard Nixon

[FR Doc.73-2651 Filed 2-7-73;8:59 am]

EXECUTIVE ORDER 11703

Assigning Policy Development and Direction Functions With Respect to the Oil Import Control Program

By virtue of the authority vested in me by the Constitution and statutes of the United States, including section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Oil Policy Committee, as reconstituted by this order, is hereby continued.

SEC. 2. The Chairman of the Oil Policy Committee shall provide policy direction, coordination, and surveillance of the oil import control program established by Proclamation No. 3279 of March 10, 1959, as amended, including approval of regulations hereafter issued pursuant to such proclamation. He shall perform those functions after receiving the advice of the Oil Policy Committee and in accordance with guidance from the Assistant to the President with responsibility in the area of economic affairs.

SEC. 3. The Oil Policy Committee shall henceforth consist of the Deputy Secretary of the Treasury, as Chairman, and the Secretaries of State, Defense, the Interior, and Commerce, the Attorney General, and the Chairman of the Council of Economic Advisers, as members. The President may, from time to time, designate other officials to serve as members of the Committee. The Chairman may create subcommittees of the Committee to study and report to the Committee concerning specified subject matters.

SEC. 4. The Oil Policy Committee shall consult with and advise the Chairman on oil import policy, including the operation of the control program under Proclamation No. 3279, as amended, and on recommendations for changes in the program by the issuance of new proclamations with respect to it, or otherwise.

SEC. 5. Section 6 of Proclamation No. 3279 of March 10, 1959, as amended, is amended to read as follows:

"SEC. 6. The Chairman of the Oil Policy Committee shall maintain a constant surveillance of imports of petroleum and its primary derivatives in respect to the national security and, after consultation with the Oil Policy Committee, he shall inform the President of any circumstances which, in the Chairman's opinion might indicate the need for further Presidential action under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended. In the event prices of crude oil or its products or derivatives should be increased after the effective date of this proclamation, such surveillance shall include a determination as to whether such increase or increases are necessary to accomplish the national security objectives of section 232 of the Trade Expansion Act of 1962, as amended, and of this proclamation."

SEC. 6. So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred by sections 2 and 5 of this order from the Director of the

Office of Emergency Preparedness to the Deputy Secretary of the Treasury, as Chairman of the Oil Policy Committee, as the Director of the Office of Management and Budget shall determine, in conformity with section 202(b) of the Budget and Accounting Act of 1950 (31 U.S.C. 581c(b)), shall be transferred at such time or times as he shall direct for use in connection with the functions transferred.

Richard Nixon

THE WHITE HOUSE,
February 7, 1973.

[FR Doc.73-2697 Filed 2-7-73;12:21 pm]

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Illinois	Cook	Oak Forest, City of.				Feb. 2, 1973. Emergency.
Do	Du Page	Wood Dale, City of.				Do.
Indiana	Noble	Unincorporated areas.				Do.
Maryland	Montgomery	Gaithersburg, City of.				Do.
Michigan	Wayne	Detroit, City of.				Do.
Do	Monroe	Monroe, Township of.				Do.
New York	Westchester	Harrison, Town of.				Do.
Do	Otsego	Oneonta, City of.				Do.
Ohio	Franklin	Worthington, City of.				Do.
Pennsylvania	Bucks	Nockamixon, Township of.				Do.
Do	do	Quakertown, Borough of.				Do.
Do	Dauphin	Paxtang, Borough of.				Do.
Do	Delaware	Folcroft, Borough of.				Do.
Do	Elk	Johnsonburg, Borough of.				Do.
Do	Franklin	Chambersburg, Borough of.				Do.
Do	Luzerne	Jenkins, Township of.				Do.
Do	do	Plymouth, Township of.				Do.
Do	do	West Wyoming, Borough of.				Do.
South Dakota	Union	North Sioux City, City of.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: February 1, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-2364 Filed 2-7-73;8:45 am]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies (1) the effective date of the authorization of the sale of flood insurance in the area under the emergency or under the regular flood insurance program; (2) the effective date on which the community became ineligible for the sale of flood insurance because of its failure to submit land use and control measures as required pursuant to § 1909.24(a); or (3) the effective date of a community's formal reinstatement in the program pursuant to § 1909.24(b). The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Colusa	Colusa, City of				Feb. 9, 1973. Emergency.
Connecticut	Middlesex	Essex, Town of				Do.
Florida	Collier	Naples, City of				July 21, 1970. Emergency. July 2, 1971. Regular. Sept. 15, 1972. Suspended. Jan. 29, 1973. Reinstated.
Do	Franklin	Unincorporated areas.				Aug. 13, 1971. Emergency. Dec. 31, 1971. Suspended. Jan. 29, 1973. Reinstated.
Illinois	Winnebago	Rockford, City of				Feb. 9, 1973. Emergency.
Indiana	Elkhart	Unincorporated areas.				Do.
Do	do	Elkhart, City of				Do.
Iowa	Clinton	Camanche, City of.				Do.
Louisiana	Calcasieu	Lake Charles, City of.				Do.
Maine	York	Kennebunk, Town of.				Do.
Massachusetts	Hampden	Springfield, City of.				Do.
Michigan	Lenawee	Clinton, Township of.				Do.
Do	St. Clair	East China, Township of.				Do.
Do	Monroe	La Salle, Township of.				Do.
Do	Wayne	Gibraltar, City of				Do.
Do	do	Grosse Pointe Farms, City of.				Do.
Minnesota	Ramsey	St. Paul City of	I 27 123 6330 01 through I 27 123 6330 08.	Division of Waters, Soils and Minerals, Dept. of Natural Resources, Centennial Office Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Dept. of Public Works, City of St. Paul, 234 City Hall and Court House, St. Paul, MN. 55102.	Apr. 2, 1971. Emergency. Feb. 9, 1973. Regular.
Do	Dakota	Lilydale, Village of.	I 27 037 4177 01	do	Thompson Lightning Protection, Inc., 901 Sibley Memorial Highway, St. Paul, MN. 55118.	Apr. 9, 1971. Emergency. Feb. 9, 1973. Regular.
Do	do	Burnsville, Village of.				Feb. 9, 1973. Emergency.
Missouri	Clay	Gladstone, City of.				Do.
New Jersey	Monmouth	Freehold, Township of.				Do.
Do	Union	Kenilworth, Borough of.				Do.
Do	Bergen	River Edge, Borough of.				Do.
Do	Burlington	Riverside, Township of.				Do.
New York	Greene	Ashland, Town of.				Do.
Do	Chemung	Elmira, Town of				Do.
Do	Suffolk	Smithtown, Town of.				Do.
North Carolina	Orange	Chapel Hill, Town of.				Do.
Pennsylvania	Northampton	Easton	I 42 095 2270 01	Dept. of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Dept., 103 Finance Bldg., Harrisburg, Pa. 17120.	Bureau of Planning, City of Easton, 500 Bushkill Dr., Easton, PA 18042.	June 18, 1971. Emergency. Feb. 9, 1973. Regular.
Do	Adams	Hamilton, Township of.				Feb. 9, 1973. Emergency.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Pennsylvania	Chester	East Vincent, Township of.				Feb. 9, 1973. Emergency.
Do	Clinton	Renovo, Borough of.				Do.
Do	Luzerne	Coyngham, Township of.				Do.
Do	do	Exeter, Borough of.				Do.
Do	Lycoming	Montoursville, Borough of.				Do.
Do	Mifflin	Burnham, Borough of.				Do.
Do	Perry	Marysville, Borough of.				Do.
Do	Tioga	Tioga, Borough of.				Do.
Do	Westmoreland	North Huntingdon, Township of.				Do.
Rhode Island	Kent	East Greenwich, Town of.	I 44 003 0035 01 through I 44 003 0035 05.	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, RI 02907. Rhode Island Insurance Division, 169 Weybosset St., Providence, RI 02903.	The Town House, Town of East Greenwich, 111 Peirce St., East Greenwich, RI 02818.	July 16, 1971. Emergency. Feb. 2, 1973. Regular.
South Dakota	Meade	Sturgis, City of				Feb. 9, 1973. Emergency.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: February 1, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-2365 Filed 2-7-73;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Minnesota	Ramsey	St. Paul, City of	H 27 123 0330 01 through H 27 123 0330 03.	Division of Waters, Soils and Minerals, Dept. of Natural Resources, Centennial Office Bldg., St. Paul, Minn. 55101. Minnesota Division of Insurance, R-210 State Office Bldg., St. Paul, Minn. 55101.	Dept. of Public Works, City of St. Paul, 234 City Hall and Court House, St. Paul, MN 55102.	Feb. 9, 1973.
Do	Dakota	Lilydale, Village of.	H 27 037 4177 01	do	Thompson Lightning Protection, Inc., 691 Sibley Memorial Highway, St. Paul, MN 55118.	Do.
New Jersey	Monmouth	Sea Girt, Borough of.	H 34 025 2990 01	Division of Water Resources, Dept. of Environmental Protection, P.O. Box 1390, Trenton, NJ 08625. New Jersey Dept. of Insurance, State House Annex, Trenton, N.J. 08625.	Office of the Borough Clerk, Borough of Sea Girt, Sea Girt, NJ 08750.	Feb. 2, 1973.
New York	Cattaraugus	Gowanda, Village of.	H 37 009 2340 01	New York State Dept. of Environmental Conservation, Division of Resources Management Services, Bureau of Water Management, Albany, N.Y. 12201. New York State Insurance Dept., 123 William St., New York, NY 10038, and 324 State St., Albany, NY 12210.	Office of the Village Clerk, Village of Gowanda, 27 East Main, Gowanda, NY 14070.	Do.
North Carolina	Beaufort	Washington Park, Town of.	H 37 013 4870 01	North Carolina Office of Water and Air Resources, Dept. of Natural and Economic Resources, P.O. Box 27687, Raleigh, NC 27611. North Carolina Insurance Dept., P.O. Box 26387, Raleigh, NC 27611.	Washington Park Community Bldg., 491 Fairview Ave., Washington, NC 27889.	Feb. 9, 1973.
Pennsylvania	Bradford	Athens, Borough of.	H 42 015 0220 01	Dept. of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Dept., 103 Finance Bldg., Harrisburg, Pa. 17120.	Office of the Borough Secretary, Borough of Athens, 103 Bridge St., Athens, PA 18801.	Feb. 2, 1973.
Do	Bucks	Perkasie, Borough of.	H 42 017 0590 01 H 42 017 0590 02	do	Perkasie Municipal Office Bldg., 607 Chestnut St., Perkasie, PA 18944.	Feb. 9, 1973.
Do	do	Morrisville, Borough of.	H 42 017 0490 01	do	Borough Hall, Borough of Morrisville, 35 Union St., Morrisville, PA 19067.	Do.
Do	do	Yardley, Borough of.	H 42 017 0550 01	do	Office of the Borough Secretary, Borough of Yardley, 16 South Main St., Yardley, PA 19067.	Do.

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Pennsylvania	Chester	Downingtown, Borough of.	H 42 029 2040 01	Pennsylvania Insurance Dept., 103 Finance Bldg., Harrisburg, Pa. 17120.	Borough Bldg., Borough of Downingtown, Four West Lancaster Ave., P. O. Box 154 Downingtown, PA 19335.	Feb. 9, 1973
Do	Cumberland	Mount Holly Springs, Borough of.	H 42 041 5530 01	do	Borough Office, Borough of Mount Holly Springs, Chestnut St., Mount Holly Springs, PA 17065.	Do.
Do	Delaware	Brookhaven, Borough of.	H 42 045 0940 01 H 42 045 0940 02	do	Brookhaven Borough Hall, Edgemont Ave. and Brookhaven Rd., Brookhaven, PA 19015.	Do.
Do	do	Upland, Borough of.	H 42 045 8710 01	do	Borough Hall, Borough of Upland, Main St. and Castle Ave., Upland, PA 19015.	Feb. 2, 1973.
Do	Luzerne	Kingston, Borough of.	H 42 079 4090 01 H 42 079 4090 02	do	Kingston Borough Bldg., 500 Wyoming Ave., P.O. Box 1229, Kingston, PA 18704.	Do.
Do	do	Wyoming, Borough of,	H 42 079 9520 01 H 42 079 9520 02	do	Wyoming Borough Town Hall, 277 Wyoming Ave., Wyoming, PA 18644.	Feb. 9, 1973.
Do	Monroe	Stroudsburg, Borough of.	H 42 089 8210 01	do	Office of the Borough Manager, Borough of Stroudsburg, Municipal Bldg., Seventh and Sarah Sts., Stroudsburg, PA 18360.	Feb. 2, 1973.
Do	Northampton	Easton, City of	H 42 095 2270 01	do	Bureau of Planning, City of Easton, 500 Bushkill Dr., Easton, PA 18042.	Feb. 9, 1973.
Do	do	Hellertown, Borough of.	H 42 095 3590 01 H 42 095 3590 02	do	Municipal Center, Borough of Hellertown, 635 Main St., Hellertown, PA 18055.	Feb. 2, 1973.
Rhode Island	Kent	East Greenwich, Town of.	H 44 003 0055 01 through H 44 003 0055 05.	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, RI 02907. Rhode Island Insurance Division, 169 Weybosset St., Providence, RI 02903.	The Town House, Town of East Greenwich, 111 Peirce St., East Greenwich, RI 02818.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)

Issued: February 1, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-2366 Filed 2-7-73;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense et al.

(1) Section 213.3106 is amended to show that positions assigned to all Cryptologic Intelligence Activities/Functions in the Military Departments are excepted under Schedule A.

(2) Section 213.3107 is amended to show that the Schedule A authority covering positions of a quasi-military nature in the Department of the Army no longer covers positions assigned to Cryptologic Intelligence Activities/Functions.

(3) Section 213.3108 is amended to show that the Schedule A authority covering positions involved in intelligence and counterintelligence work in the Department of the Navy no longer covers positions assigned to Naval Security Group Activities/Functions.

(4) Section 213.3209 is amended to show that the Schedule B authority covering positions assigned to Air Force Communications Intelligence Activities no longer covers positions assigned to Cryptologic Intelligence Activities Functions.

Effective on February 8, 1973, paragraph (a) (7) of § 213.3106 is added, paragraph (a) (1) of § 213.3107 is amended, paragraph (a) (1) of § 213.3108 is amended, and paragraph (a) of § 213.3209 is amended as set out below.

§ 213.3106 Department of Defense.

* * * * *

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* * * *

(7) Positions assigned to all Cryptologic Intelligence Activities/Functions of the Military Departments.

* * * * *

§ 213.3107 Department of the Army.

(a) *General.* (1) Positions the duties of which are of a quasi-military nature and involve the security of secret or confidential matter when, in the opinion of the Commission, appointment through competitive examination is impractical. This authority does not apply to positions assigned to Cryptologic Intelligence Activities/Functions.

* * * * *

§ 213.3108 Department of the Navy.

(a) *General.* (1) Intelligence and counterintelligence positions assigned to Naval Intelligence Activities/Functions, except positions in Cryptologic Intelligence Activities/Functions. Use of this authority outside the Naval Intelligence Command requires prior certification by the Commander, Deputy Commander, or Assistant Deputy Commander that the incumbent will perform duties concerned with the specific function in carrying out assigned responsibilities.

* * * * *

§ 213.3209 Department of the Air Force.

(a) Positions assigned exclusively to Air Force Communications Intelligence Activities excluding positions in Cryptologic Intelligence Activities/Functions.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2490 Filed 2-7-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3114 is amended to show that 20 additional positions at GS-12 and above in specialized fields relating to international trade or commerce in the Bureau of International Commerce or in other units under the jurisdiction of the Assistant Secretary for Domestic and International Business are excepted under Schedule A. This section is further amended to reflect organization redesignations in components under the Office of the Assistant Secretary for Domestic and International Business.

Effective on February 8, 1973, paragraphs (i) (1) and (3) of § 213.3114 are amended as set out below.

§ 213.3114 Department of Commerce.

* * * * *

(i) *Office of the Assistant Secretary for Domestic and International Business.* (1) Thirty positions at GS-12 and above in specialized fields relating to international trade or commerce in the Bureau of International Commerce or in other units under the jurisdiction of the Assistant Secretary for Domestic and International Business. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for any individual appointee.

* * * * *

(3) Not to exceed 30 positions in grades GS-12 through GS-15, to be filled by persons qualified as industrial or marketing specialists, who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of industry served by the Office of Business Services, the Bureau of Competitive Assessment and Business Policy, and the Bureau of Resources and Trade Assistance. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of the Commission, be extended for an additional period of 2 years.

* * * * *

(5 U.S.C. secs 3301, 3302, E.O. 10577; 3 CFR 1954-58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2491 Filed 2-7-73;8:45 am

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Areas Quarantined

These amendments quarantine portions of Starr and Hidalgo Counties in Texas and an additional portion of Riverside County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, apply to the quarantined areas.

Pursuant to the provisions of sections 1, 2, 3, and 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4, 5, 6, and 7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 124, 125, 126, 134b, 134f), Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Texas after the reference to "California," and a new paragraph (a)(2) relating to the State of Texas is added to read:

(a) * * *

(2) *Texas.* The adjacent portions of Starr and Hidalgo Counties bounded by a line beginning at the junction of Farm-to-Market Road 2221 and the Jara Chinas Road in Hidalgo County; thence, following the Jara Chinas Road in a southerly direction to U.S. highway 83; thence, following U.S. Highway 83 in an easterly direction to Farm-to-Market Road 2521; thence, following Farm-to-Market Road 2521 in a southerly direction to the north bank of the Rio Grande River; thence, following the north bank of the Rio Grande River in a generally northwesterly direction to the La Grulla-Rio Grande Road in Starr County; thence, following the La Grulla-Rio Grande Road in a generally northwesterly direction to Farm-to-Market Road 2360; thence, following Farm-to-Market Road 2360 in a northerly, then easterly, then northerly direction to the Garcia-Yturria Oil Field Road; thence, following the Garcia-Yturria Oil Field Road in a northeasterly direction through the Yturria Oil Field (4 miles) to the El Toro-El Ebanito Oil Field Road; thence, following the El Toro-El Ebanito Oil Field Road in a northerly direction (1½ miles) to the El Ebanito-Sullivan City Oil Field Extension Road; thence, following the El Ebanito-Sullivan City Oil Field Extension Road in an easterly direction (2¼ miles) to the Sullivan City Oil Field Extension Road; thence, following the Sullivan City Oil Field Extension Road in a generally southwesterly direction (5¼ miles) to the western extension of Farm-to-Market Road 2221; thence, following the western extension of Farm-to-Market Road 2221 in an easterly direction to its junction with the Jara Chinas Road in Hidalgo County.

2. In § 82.3, in paragraph (a)(1) relating to the State of California, a new subdivision (vi) relating to Riverside County is added to read:

(a) * * *

(1) *California.* * * *

(vi) The premises of Paul Lohr and Herbert Grimm, 15420 El Sobrante Street, City of Riverside in Riverside County, comprised of 10 acres located in the southeast quarter of the southeast quarter of the southwest quarter of sec. 34, T. 3 S., R. 5 W.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132, 21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f; 37 FR 28464, 28477)

Effective date. The foregoing amendments shall become effective February 2, 1973.

The amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 2d day of February 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-2472 Filed 2-7-73;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. K]

PART 211—CORPORATIONS ENGAGED IN FOREIGN BANKING AND FINANCING UNDER THE FEDERAL RESERVE ACT

Special Purpose Leasing Corporations

Part 211 of Title 12 is amended by adding the following new section:

§ 211.108 Special purpose leasing corporations.

(a) A question has been raised with the Board as to whether a corporation organized under section 25(a) of the Federal Reserve Act (an "Edge corporation") either alone or in participation with gaged in the general business of leasing personal property and equipment is required under paragraph 8 of section 25(a) and § 211.8(b) (Regulation K) to obtain the Board's prior approval for investments in special purpose leasing corporations that are formed as vehicles for specific leasing transactions (or the functional equivalent thereof) with a single customer, rather than to engage in the general business of leasing. In the Board's opinion, such special purpose corporations represent credit facilities provided by the parent financial institution, either alone or in participation with others, and should be regarded as activities of the parent financial institution and not as investments requiring Board approval.

(b) It is common practice for certain types of lease financings to be structured in such a way that legal title to the personal property or equipment rests in a

separately incorporated entity, as, for example, in the leasing of commercial aircraft or vessels. Such a corporation, herein referred to as a "special purpose corporation," may be used to reduce the potential exposure of the parent financial institution to tort liability arising in connection with the operation of an aircraft or vessel, to comply with the laws of the various countries relating to registration of aircraft or vessels or perfecting liens on equipment, or to minimize taxes upon rental payments received under the lease.

(c) The distinguishing feature of special purpose corporations is that they are formed for the purpose of engaging in a particular transaction involving the financing of one or more items of personal property or equipment and a single customer, rather than a general business. In the Board's judgment, no regulatory purpose asosciated with paragraph 8 of section 25(a) and § 211.8(b) of Regulation K would be served by having the Board screen in advance each transaction entered into in this manner.

(d) The Board understands that, in most cases, these special purpose corporations are established under an arrangement whereby the creditors who have made loans to such corporations do not have recourse to the parent Edge corporation, or its subsidiary engaged in the general business of leasing or financing, for the repayment of such loans. In those instances where the financing arrangement contemplates that creditors of the special purpose corporation shall have recourse to the parent Edge corporation or its leasing or financing subsidiary, borowings by the special purpose leasing corporation of the type described in § 211.4 of Regulation K shall be regarded as if the borrowings were those of the guarantor and shall not cause the borrowings of the latter to exceed the amount previously approved by the Board. All assets and liabilities of special purpose corporations shall be fully reflected in consolidated financial statements of their parent institution(s) filed with Federal bank regulatory authorities.

(e) The parent Edge corporation shall furnish the Board with such information regarding the activities of each special purpose corporation as it may require from time to time and maintain full information on such subsidiaries at its head office. By reference this interpretation also applies to investments made directly or indirectly by bank holding companies in special purpose corporations of the type described above which do no business in the United States except as may be incidental to their international or foreign business.

(12 U.S.C. 615)

By order of the Board of Governors, January 26, 1972.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.73-2441 Filed 2-7-73;8:45 am]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Nondiscrimination Requirements in Real Estate Loan Activities

On page 18202 of the September 8, 1972 edition of the FEDERAL REGISTER, there were published proposed regulations relative to nondiscrimination requirements in real estate loan activities.

After considering all comments submitted by interested parties, the regulations, as proposed, are hereby adopted subject to the following revisions:

1. In each instance where the citation "746.6" is used, change that citation to "701.31".

2. In § 701.31(a), lines 2-3, change "federally insured" to "Federal".

3. In § 701.31(a), line 20, following the word "loans" insert ", including those broadcast by television as well as those published by printing,".

4. In § 701.31(c), in the last line of the required notice, after the letters "HUD", delete "or FHA office" and insert "Area or Insuring Office".

Effective date. These regulations shall become effective April 2, 1973.

HERMAN NICKERSON, Jr., *Administrator.*

FEBRUARY 1, 1973.

§ 701.31 Nondiscrimination requirements.

(a) *Advertising notice of nondiscrimination compliance.* Every Federal credit union which directly or through third parties engages in any form of advertising of loans for the purpose of purchasing, improving, repairing, or maintaining a dwelling shall prominently indicate in such advertisements, in a manner appropriate to the advertising media and format utilized, that such credit union makes such loans without regard to race, color, religion, or national origin. No words, phrases, symbols, directions, forms, models, or other means shall be used to express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of title VIII of the Civil Rights Act of 1968. Written advertisements relating to such loans, including those broadcast by television as well as those published by printing, shall include a facsimile of the logotype appearing in paragraph (c) of this section in order to increase public recognition of the nondiscrimination requirements and guarantees of the aforementioned title VIII.

(b) *Lobby notice of nondiscrimination compliance.* Every federally insured credit union which engages in extending loans for the purpose of purchasing, improving, repairing, or maintaining a dwelling shall conspicuously display in the public lobby of such credit union and in the public area of each office where such loans are made, in a manner so as to be clearly visible to the general public entering such lobby or area, a notice that incorporates a facsimile of the logotype appearing in paragraph (c) of this section, and attests to such credit union's policy of compliance with the nondiscrimination requirements of title VIII of the Civil Rights Act of 1968. Such notice shall include the address of the Department of Housing and Urban Development as the agency to be notified concerning any complaint alleging a violation of the nondiscrimination provisions of the aforementioned title VIII.

(c) *Logotype and notice of nondiscrimination compliance.* The logotype and text of the notice required in paragraphs (a) and (b) of this section shall be as follows:

EQUAL HOUSING
LENDER

We Do Business in Accordance With the Federal Fair Housing Law

IT IS ILLEGAL, BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN, TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing of the amount, interest rate, duration, application procedures or other terms or conditions of such a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY SEND A COMPLAINT TO:

Assistant Secretary for Equal Opportunity,
Department of Housing and Urban Development,
Washington, D.C. 20410,
or call your local HUD Area or Insuring Office
[FR Doc.73-2423 Filed 2-7-73;8:45 am]

PART 721—INCIDENTAL POWERS

Insurance Activities

On page 24124 of the FEDERAL REGISTER of November 14, 1972 (37 FR 24124), there was published a notice of proposed rule making by the Administrator, National Credit Union Administration. The proposed regulation set forth a revision to § 721.1(j) (12 CFR 721.1(j)) which would permit Federal credit unions, in those States where local law requires, to have an employee serve as a licensed insurance agent. However, the employee/agent could not be compensated for tasks performed as a licensed agent and the activities with regard to such agency must be limited to those activities permitted for Federal credit unions in accordance with provisions of § 721.1 (12 CFR 721.1).

After considering those comments which have been submitted by interested persons, the Administrator has determined that the proposed regulations shall be adopted without change.

Effective date. This regulation is effective March 5, 1973.

HERMAN NICKERSON, Jr.,
Administrator.

FEBRUARY 1, 1973.

1. Paragraph (j) of § 721.1 (12 CFR 721.1(j)) is revised by adding at the end thereof the following sentence:

§ 721.1 Insurance activities.

* * * * *

(j) * * * Notwithstanding the foregoing, in those States where a licensed agent is required in order to engage in activities authorized in this section, an employee of the particular credit union concerned may act in such an agency capacity, *Provided*, That neither the employee nor the credit union may receive any remuneration for transactions performed pursuant to such an agency, *And provided further*, That the activities conducted pursuant to such an agency shall be limited to those activities otherwise permitted by this section.

* * * * *

[FR Doc.73-2422 Filed 2-7-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 10355, Amdt. 37-35, 43-17, 91-107, 121-101, 127-31, 135-33]

SUBCHAPTER C—AIRCRAFT

PART 37—TECHNICAL STANDARD ORDER AUTHORIZATIONS

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

Airborne ATC Transponder Equipment

Correction

In FR Doc. 72-22184 appearing at page 28495 in the issue for Wednesday, December 27, 1972 the following changes should be made:

1. In § 37.180, in paragraph (a)(1)(iii), (2)(i), (ii), (iii), and (iv), in all references to Part 2 of RTCA Document DO-144 the figure "2" should read "two".

2. In Appendix F to Part 43 the last line of (e)(1), reading "of the P_2 pulse is equal to the P_2 Pulse.", should read, "of the P_2 pulse is equal to the P_1 Pulse."; and the last line of (e)(2), now reading "P_2 pulse is 9 db less than the P_2 pulse.", should read "P_2 pulse is 9 db less than the P_1 pulse."

[Docket No. 73-CE-1-AD, Amdt. 39-1592]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 99 Series Airplanes

A fatigue crack was discovered in the vertical stabilizer main spar of a Beech Model 99 airplane during an inspection following a landing accident. Further inspections revealed cracks in similar locations on other Beech 99 series airplanes. This condition, if not discovered and corrected, may result in failure of the spar. The manufacturer has issued Beechcraft Service Instructions No. 0530-134 which provide inspection procedures and repair or replacement procedures if cracks or nicks are found in the vertical stabilizer main spar. The inspection called for therein is accomplished by removing the fuselage tailcone and using a long handled, three to five power magnifying glass. The repair or replacement procedures include the installation of a plate doubler to the spar.

Since the condition described herein is likely to exist or develop in other airplanes of the same type design an Airworthiness Directive is being issued, applicable to Beech Model 99 series air-

planes with 2,000 or more hours' time in service, making compliance with the Beechcraft Service Instruction mandatory.

Since a situation exists which requires expeditious adoption of the amendment, notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to Beech Model 99 series (Serial Numbers U-1 through U-151) airplanes with 2,000 or more hours' time in service.

Compliance: Required as indicated, unless already accomplished.

To detect cracks or nicks in the vertical stabilizer main spar accomplish the following in accordance with Beechcraft Service Instructions No. 0530-134 or any equivalent method of compliance approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region:

(A) Within 50 hours' time in service after the effective date of this AD, unless already accomplished within the last 450 hours' time in service, and thereafter at intervals not to exceed 500 hours' time in service, inspect the vertical stabilizer main spar at each side of the bend location for cracks or nicks as shown in Figure 3 of Beechcraft Service Instructions No. 0530-134 utilizing a three to five power magnifying glass.

(B) If during any inspection required herein, a crack (not to exceed 0.25 inch in length) is found in either a spar flange or in an angle doubler, but not cracks in both members on the same side, prior to further flight (except one flight per FAR 21.197(a)(1) may be authorized with concurrence of the Chief, Engineering and Manufacturing Branch, FAA, Central Region) either:

1. Repair the spar by installing a plate doubler in accordance with Beechcraft Service Instructions No. 0350-134 and reinspect at 500 hour intervals thereafter per Paragraph A, or

2. Replace the spar with an equivalent airworthy part and reinspect per requirements of this AD.

(C) If during any inspection required herein a crack is found in both the spar flange and angle doubler flange on the same side, or if a crack exceeds 0.25 inch in length, replace the vertical stabilizer assembly and reinspect per the requirements of this AD.

(D) If no cracks are found as a result of any inspection required by this AD and in addition, a plate doubler is installed per Beechcraft Service Instructions No. 0350-134, the inspection requirements of this AD are no longer applicable.

This amendment becomes effective February 12, 1973.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 29, 1973.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.73-2406 Filed 2-7-73;8:45 am]

[Airspace Docket No. 72-SO-77]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On September 19, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 19146), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Carrollton, Ga., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to publication of the notice, the final approach bearing for NDB Runway 34 Instrument Approach Procedure was changed to the 169° bearing. It is necessary to alter the description to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 1, 1973, as hereinafter set forth.

In § 71.181 (38 FR 435), the following transition area is added:

CARROLLTON, GA.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of West Georgia Regional Airport (latitude 33°37'47" N., longitude 85°09'13" W.); within 3 miles each side of the 169° bearing from Carrollton RBN (latitude 33°38'02" N., longitude 85°09'13" W.), extending from the 6.5-mile radius area to 8.5 miles south of the RBN.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on December 6, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-2407 Filed 2-7-73;8:45 am]

[Airspace Docket No. 72-WA-11]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Terminal Control Area at Miami, Fla.

On November 7, 1972, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (37 FR 23648) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a Group I Terminal Control Area (TCA) for Miami, Fla.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Due consideration was given to all relevant matter presented.

Five comments which objected to certain aspects of the proposal were received in response to the notice of proposed rule making. All other comments were favorable. It was the opinion of one organization that the proposed TCA would be unusable and unsafe unless a new VORTAC were located on the Miami Airport and the TCA boundaries defined by radials and DME distances in relation to the VORTAC. It is FAA policy to define the boundaries of designated airspace areas by electronic navigational aids or prominent visual landmarks, i.e., railroads, highways, or shorelines where these are available. However, these aids are often not present in the desired location. Therefore, most airspace area boundaries are defined by geographic coordinates or similar means. The narrative description of the airspace boundaries is primarily to enable the charting agencies to properly depict the area. They also establish a legal description and are not intended for navigation. Since a VORTAC is not available on the Miami Airport, it is necessary to use other means to define the area. There are plans to relocate the Biscayne VOR but engineering studies have not as yet revealed a suitable location on the Miami Airport due to the structures on and adjacent to the airport. If the decision is made to locate the VOR on Miami Airport, steps will be taken to redefine the TCA airspace based on the new VOR.

It was suggested that the floors of certain areas be lowered to contain ILS approaches to Miami and that the top of the TCA be raised to 10,000 feet. The glide slope of each Miami ILS system has been raised to 3 degrees in order to contain all ILS approaches within TCA airspace. The FAA is considering raising the top of TCA's to 12,500 feet at some future date.

One commenter suggested that the floor of Areas F and D be tapered upward and outward from 3,000 feet at the 8- or 9-mile radius to 5,000 feet at the 20-mile radius circle. There is no feasible way to chart a sloping airspace floor so that a pilot would know its altitude at any given point. In order to provide more airspace under the TCA, the floors of proposed Areas F and D have been raised to 3,000 feet m.s.l. between the 15- and 20-mile radius circles. This is the only airspace change from that proposed in the NPRM.

A North/South VFR corridor, 4 miles wide, extending from 1,500 to 5,000 feet m.s.l., was suggested. A corridor of these dimensions would be so restrictive as to render the TCA unusable and a VFR corridor of smaller dimensions, which would permit TCA operations, would be impractical in the Miami area where the average cloud level begins at 3,000 feet or lower making VFR flight frequently impossible at those altitudes.

In consideration of the foregoing, § 71.401(a) (38 FR 622) of the Federal Aviation Regulations is amended by add-

ing the Miami, Fla., Group I Terminal Control Area as follows:

MIAMI, FLA., TERMINAL CONTROL AREA

PRIMARY AIRPORT

Miami International Airport (latitude 25°47'34" N., longitude 80°17'10" W.).

Boundaries

Area A

The airspace extending from the surface to and including 7,000 feet m.s.l. within an 8-mile radius of Miami International Airport (latitude 25°47'34" N., longitude 80°17'10" W.) extending clockwise from the 360° bearing to the 180° bearing from the Miami International Airport; and within a 9-mile radius of the Miami International Airport extending clockwise from the 180° bearing to the 360° bearing from the Miami International Airport; excluding that airspace within and underlying Areas B, C, and E.

Area B

The airspace over Biscayne Bay extending from 1,000 feet m.s.l. to 7,000 feet m.s.l. inclusive bounded on the east by the arc of an 8-mile circle centered on the Miami International Airport, on the south by the Biscayne VORTAC 269° radial, and on the west by the west shoreline of Biscayne Bay.

Area C

The airspace north of Miami extending from 5,000 to 7,000 feet m.s.l. inclusive beginning at the intersection of the arc of a 15-mile radius circle centered on Miami International Airport and Miami VOR 089° radial, thence west along this radial, to and southwest along the 038° bearing from the center of Miami International Airport, to and west along latitude 25°52'34" N., to and northwest along Miami VOR 130° radial, to Miami VOR, thence west along Miami VOR 269° radial, to and clockwise along the arc of a 15-mile radius circle centered on Miami International Airport, to point of beginning.

Area D

The airspace east of Miami extending from 2,000 to 7,000 feet m.s.l. inclusive, bounded on the north by Miami VOR 089° radial, on the east by the arc of a 15-mile radius circle centered on Miami International Airport, on the south by Biscayne VOR 089° and 269° radials, on the west by the arc of an 8-mile radius circle centered on the Miami International Airport and on the northwest by the 038° bearing from the center of Miami International Airport.

Area E

The airspace south of Miami extending from 5,000 to 7,000 feet m.s.l. inclusive, bounded on the north by Biscayne VOR 089° and 269° radials, and on the southeast, south and southwest by the arc of a 15-mile radius circle centered on Miami International Airport.

Area F

The airspace west of Miami extending from 2,000 to 7,000 feet m.s.l. inclusive, bounded on the north by Miami VOR 269° radial, on the northeast by Miami VOR 130° radial, on the east by Area A, on the south by Biscayne VOR 269° radial, and on the west by the arc of a 15-mile radius circle centered on Miami International Airport.

Area G

The airspace west of Miami extending from 3,000 to 7,000 feet m.s.l. inclusive, bounded on the north by Miami VOR 269° radial, on the east by Area F, on the south by Biscayne VOR 269° radial and on the west by the arc of a 20-mile radius circle centered on the Miami International Airport.

Area H

The airspace east of Miami extending from 3,000 to 7,000 feet m.s.l. inclusive, bounded on the north by Miami VOR 089° radial, on the east by the arc of a 20-mile radius circle centered on the Miami International Airport, on the south by Biscayne VOR 089° radial and on the west by Area D.

(Sec. 307(a), 1110 Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510, Executive Order 10854, 24 FR 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 2, 1973.

Effective 0901 G.m.t., April 26, 1973.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2402 Filed 2-7-73;8:45 am]

[Airspace Docket No. 72-GL-67]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

On December 9, 1972, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (37 FR 26343) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would alter Restricted Area R-4201, Camp Grayling, Mich., by modifying its boundaries and dividing it into two subareas authorized for continuous use. The designated controlling agency would also be changed.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Only one comment was received, and it was favorable.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 26, 1973, as hereinafter set forth.

In § 73.42 (38 FR 654) amend the description of R-4201 Camp Grayling, Mich., to read as follows:

R-4201 CAMP GRAYLING, MICH.

A. SUBAREA A

Boundaries: Beginning at latitude 44°56'00" N., longitude 84°29'00" W.; to latitude 44°47'00" N., longitude 84°29'00" W.; to latitude 44°47'00" N. longitude 84°39'00" W.; to latitude 44°56'00" N., longitude 84°39'00" W.; to point of beginning.

Designated altitudes: Surface to 29,000 feet m.s.l.

Time of designation: Continuous.

Controlling agency: Federal Aviation Administration, Minneapolis ARTC Center.

Using agency: Adjutant General, State of Michigan, Lansing, Mich.

B. SUBAREA B

Boundaries: Beginning at latitude 44°47'00" N., longitude 84°29'00" W.; to latitude 44°41'00" N., longitude 84°29'00" W.; to latitude 44°41'00" N., longitude 84°40'00" W.; to latitude 44°43'00" N., longitude 84°40'00" W.; to latitude 44°43'00" N., longitude 84°38'00" W.; to latitude 44°47'00" N., longitude 84°38'00" W.; to point of beginning.

Designated altitudes: Surface to 9,000 feet m.s.l.

Time of designation: Continuous

Controlling agency: Federal Aviation Administration, Minneapolis ARTC Center.

Using agency: Adjutant General, State of Michigan, Lansing, Mich.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 31, 1973.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2403 Filed 2-7-73;8:45 am]

[Airspace Docket No. 72-WA-66]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Change to Area High Route Waypoint; Correction

On January 17, 1973, FR Doc. 73-347 was published in the FEDERAL REGISTER (38 FR 1635) which amended Part 75 of the Federal Aviation Regulations, effective 0901 G.m.t., March 1, 1973, by changing the name of the Summerville, Ga., waypoint to Trion, Ga.

In that amendment the latitude for the geographic position of the waypoint should have been published as 34°27'25" N. rather than 34°37'25" N. The purpose of this action is to correct that error.

Since this amendment is editorial in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary and good cause exists for making this amendment effective on less than 30 days notice.

In consideration of the foregoing, effective on February 8, 1973, FR Doc. 73-947 (38 FR 1635) is amended as hereinafter set forth.

In J952R "Summerville, Ga., 34°37'25" N." and "Trion, Ga., 34°27'25" N." are deleted and "Summerville, Ga., 34°27'-25" N." and "Trion, Ga., 34°27'25" N." substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C. on February 2, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2405 Filed 2-7-73;8:45 am]

[Docket No. 12538, Amdt. 850]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAP's) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3,

8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAP's are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591, or from the applicable FAA region office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAP's, effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, VOR Runway 7L/R, Amdt. 8.
Los Angeles, Calif.—Los Angeles International Airport, VOR Runway 25L, Amdt. 2.
Los Angeles, Calif.—Los Angeles International Airport, VOR Runway 25R, Amdt. 2.

* * * effective March 1, 1973:

Miami, Fla.—Miami International Airport, VOR Runway 30, Original.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAP's, effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, Localizer (BC) Runway 6L, Amdt. 3.
Los Angeles, Calif.—Los Angeles International Airport, LOC (BC) Runway 7R, Amdt. 7.
Medford, Oreg.—Medford-Jackson County Airport, LOC/DME (BC) A, Amdt. 1.

* * * effective February 15, 1973:

Los Angeles, Calif.—Los Angeles International Airport, LOC Runway 6R, Original.

* * * effective January 24, 1973:

Norwood, Mass.—Norwood Memorial Airport, SDF Runway 35, Amdt. 2.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAP's, effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, NDB Runway 24L/R, Amdt. 7.
Los Angeles, Calif.—Los Angeles International Airport, NDB Runway 25L, Amdt. 35.

* * * effective February 15, 1973:

Festus, Mo.—Festus Memorial Airport, NDB Runway 36, Original.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAP's, effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, ILS Runway 7L, Amdt. 7.
Los Angeles, Calif.—Los Angeles International Airport, ILS Runway 24L/R, Amdt. 3.
Los Angeles, Calif.—Los Angeles International Airport, ILS Runway 25L/R, Amdt. 5.

* * * effective February 22, 1973:

Pontiac, Mich.—Oakland-Pontiac Airport, ILS Runway 9, Original.

5. Section 97.31 is amended by originating, amending, or canceling the following Radar SIAP's effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, Radar-1, Amdt. 29.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAP's effective March 22, 1973:

Los Angeles, Calif.—Los Angeles International Airport, RNAV Runway 6L, Original.
Los Angeles, Calif.—Los Angeles International Airport, RNAV Runway 7L, Original.
Los Angeles, Calif.—Los Angeles International Airport, RNAV Runway 24R, Original.
Los Angeles, Calif.—Los Angeles International Airport, RNAV Runway 25L, Original.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c), 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on February 1, 1973.

JAMES F. RUDOLPH,
Director,
Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.73-2404 Filed 2-7-73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IA-355, IC-7605]

PART 200—ORGANIZATION, CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

DIVISION OF INVESTMENT COMPANY REGULATION RENAMED DIVISION OF INVESTMENT MANAGEMENT REGULATION

The Securities and Exchange Commission announced today the change in the name of the "Division of Investment Company Regulation" to the "Division of Investment Management Regulation." The new name, which will become effective January 5, 1973, is intended to reflect more accurately the functions and responsibilities of the Division, which include administration of the Commission's program for regulation of investment advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq., 80b-1 et seq.). Both functions were consolidated in this one Division in recognition of the need for a coordinated and uniform approach to all forms of professional money management. The Division of Investment Management Regulations has been delegated responsibility for assessing the adequacy of existing regulatory patterns and monitoring the development of such diverse products and services as registered investment companies, individualized investment management arrangements, oil and gas drilling funds, and other tax-sheltered vehicles, all of which often compete for the same investment dollars.

Commission action. The Securities and Exchange Commission, pursuant to the authority in section 4 of the Securities Exchange Act of 1934, as amended, and Public Law 87-592, 76 Stat. 397 (15 U.S.C. 78d-1), hereby amends Subpart A of Part 200 of Title 17 of the Code of Federal Regulations by (1) deleting in § 200.20b from the caption of said section and from the first paragraph of said section the words "Investment Company Regulation" and by adding in lieu thereof the words "Investment Management Regulation," and by (2) deleting in § 200.30-5 from the caption of said section, and from the first paragraph and from paragraph (e) of said section the words "Investment Company Regulation" and by adding in lieu thereof the words "Investment Management Regulation."

As so amended §§ 200.20b and 200.30-5 read as follows:

§ 200.20b Director of the Division of Investment Management Regulation.

The Director of the Division of Investment Management Regulation is responsible to the Commission for the administration of the Commission's responsibilities under the Investment Company Act of 1940 and the Investment Advisers Act of 1940; matters involving the economics, distribution methods, and services of investment companies; and the investigations and inspections arising in connection with such administration, as listed below:

* * * * *

§ 200.30-5 Delegation of authority to Director of Division of Investment Management Regulation.

Pursuant to the provisions of Public Law No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Investment Management Regulation, to be performed by him or under his direction by such person or persons as may be designated from time

to time by the Chairman of the Commission:

* * * * *

(e) Notwithstanding anything in the foregoing, in any case in which the Director of the Division of Investment Management Regulation believes it appropriate, he may submit the matter to the Commission.

(Sec. 4, 48 Stat. 885, Public Law 87-592, 76 Stat. 397, 15 U.S.C. 78d)

The Commission finds that the foregoing relates solely to agency organization, procedure and practice and that notice and procedure under 5 U.S.C. 553 are unnecessary. Accordingly, the foregoing action became effective on January 5, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

JANUARY 5, 1973.

[FR Doc.73-2466 Filed 2-7-73;8:45 am]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Delegation of Authority to Director of Division of Corporation Finance

Recent revisions to Regulation B under the Securities Act of 1933 (17 CFR 230.300, et seq.) (37 FR 23831) concerning exemptions relating to fractional undivided interests in oil or gas rights necessitate certain changes with respect to delegation of authority in the Commission's statement of its organization, conduct and ethics and information and requests (17 CFR 200.1, et seq.), as published in the Code of Federal Regulations (37 FR 16791). Accordingly, Article 30-1 is amended by revising paragraph (b) thereunder.

Commission action. Pursuant to authority in Section 4(b) of the Securities Exchange Act of 1934, as amended, and Public Law 87-592, 76 Stat. 394 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby amends paragraph (b) of § 200.30-1 of Title 17 of the Code of Federal Regulations to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(b) With respect to the Securities Act of 1933 (15 U.S.C. 77a, et seq.) and Regulation B thereunder (§ 230.300, et seq. of this chapter):

(1) To authorize the commencement of the offering within shorter periods of time than 10 days after the filing of the offering sheet, pursuant to Rule 310(a) thereunder (§ 230.310(a) of this chapter);

(2) To authorize the issuance of orders temporarily suspending the effectiveness of offering sheets as prescribed in Rule 334 thereunder (§ 230.334 of this chapter);

(3) To issue notices of suspension of offering sheets and of opportunity for hearing thereon, in the manner prescribed in Rule 336(a) thereunder (§ 230.336(a) of this chapter);

(4) To terminate temporary suspension orders issued by the Commission under Rule 334 (§ 230.334 of this chapter), to terminate proceedings under Rule 336(a) (§ 230.336(a) of this chapter) and to issue notices of such action, if at any time before the Commission enters an order setting the matter down for hearing, as set forth in Rule 336(c) (§ 230.336(c) of this chapter), it finds that the offering sheet has been amended to cure the objections specified in the temporary suspension order or the notice instituting the proceeding;

(5) To authorize the issuance of orders granting requests for withdrawal of offering sheets, pursuant to Rule 344 thereunder (§ 230.344 of this chapter), when it appears that no sales of securities described in said offering sheets have, in fact, been made;

(6) To authorize the issuance of orders declaring offering sheets effective, as amended, filed in accordance with the provisions in Rule 340 thereunder (§ 230.352 of this chapter) and Rule 342 (c) thereunder (§ 230.342(c) of this chapter):

(7) To authorize the issuance of orders terminating the effectiveness of offering sheets upon applications of persons filing them in compliance with the provisions of Rule 346 thereunder (§ 230.346 of this chapter).

* * * * *

(Sec. 4(b), 48 Stat. 885, sec. 1106(a), 63 Stat. 972, 15 U.S.C. 78d(b); sec. 1, 76 Stat. 394, 15 U.S.C. 78d-1)

The Commission finds that the foregoing actions relate solely to agency organization, procedure or practice and that notice and procedures under 5 U.S.C. 533 are unnecessary. Accordingly, the foregoing actions, which were taken pursuant to Public Law No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), became effective January 1, 1973.

By the Commission.

RONALD F. HUNT, *Secretary.*

[FR Doc.73-2467 Filed 2-7-73;8:45 am]

[Release No. 34-9981]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Reporting of Market Information on Transactions in Listed Securities; Extension of Deadlines

The Securities and Exchange Commission has extended from January 26, 1973, until February 26, 1973, the deadline by which each registered national securities exchange and national securities association must file with the Commission a plan pursuant to Rule 17a-15 (17 CFR 240.17a-15) under the Securities Exchange Act of 1934[1] (the "Rule") for the reporting of prices and volume of completed transactions in listed securities (last sale reports). The Commission has also extended from February 26, 1973 until March 26, 1973 the rule's prohibition against releasing last sale reports on a current and continuing basis without an effective plan. The Commission has determined further to extend these deadlines[2] in view of the substantial progress which we understand has been made toward submission of a plan which would cover last sale reporting for all registered exchanges and the NASD.

(Secs. 10(b), 15(c), 17(a), 23(a), 48 Stat. 891, 895, 897, 901, 49 Stat. 1377, 1379, 52 Stat. 1075, 1076, 78 Stat. 570, 84 Stat. 1653, 15 U.S.C. 78j(b), 78o(c), 78q, 78w)

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

FEBRUARY 2, 1973.

[FR Doc.73-2465 Filed 2-7-73;8:45 am]

[1] Adoption of the rule was announced on Nov. 8, 1972, in Securities Exchange Act Release No. 9850, published in the FEDERAL REGISTER for Nov. 15, 1972, at 37 FR 24172.

[2] An earlier extension of the deadlines was announced on Jan. 3, 1973, in Securities Exchange Act Release No. 9924, published in the FEDERAL REGISTER for Jan. 9, 1973, at 38 FR 1121.

Title 18—Conservation of Power and Water Resources

CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 306—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

In accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894 (42 U.S.C. 4601) and the guidelines therefor in Attachment A to OMB Circular No. A-103, of May 1, 1972, this document establishes the regulations and procedures describing the conditions under which those provisions will be carried out by the Tennessee Valley Authority, and supersedes the interim regulations and procedures published as FR Doc. 71-9924 in the issue for Wednesday, July 14, 1971, 36 FR 13115.

These regulations and procedures describe the classes of persons who are eligible for relocation assistance and the kinds of benefits that are available, such as reimbursement for moving expenses, supplemental housing payments, and relocation advisory assistance. They also prescribe the procedures to be followed in applying for any such benefits or assistance and establish a procedure for the determination of disputes relating thereto. In addition, they set out certain policies that are followed by TVA in the acquisition of real property with respect to the conditions under which negotiations will be conducted, possession will be taken by TVA, and improvements may be removed.

TVA's interim regulations and procedures, FR Doc. 71-9924, were published in the notices section of the issue for Wednesday, July 14, 1971, 36 FR 13115, and were cross-referenced in the pro-

posed rule making section of the issue for Friday, July 16, 1971, 36 FR 13221. Comments and suggestions were invited for consideration in the preparation of TVA's final regulations and procedures but no comments or suggestions were received. The following regulations and procedures are substantially the same as the interim regulations and procedures, although refinements of language have been made and the form has been changed for adaptation in the Code of Federal Regulations. Minor changes were made in conformance with OMB Guidelines, Attachment A to Circular No. A-103, the more significant of which are as follows: In § 306.5(a)(3) the period for which the cost of storage of personal property will be reimbursed has been extended from 6 months to 12 months; in § 306.5(e) a provision has been added to make clear that the cost to TVA in removing abandoned personal property will not be offset against payments to a displacee; in § 306.7(a)(2) the provision for a moving expense allowance not to exceed $300, in lieu of the reimbursement of actual moving expenses from a dwelling, is now based on current schedules approved by the Federal Highway Administration, whereas it was previously based on $25 per room or $150 per mobile home; in § 306.8 the time for filing a claim for reimbursement of moving or related expenses has been extended from 12 months to 18 months following completion of the move; and in § 306.9(b)(1) provisions have been added to make clear that newly constructed housing will not be excluded from consideration as comparable replacement housing and that housing exceeding the criteria for comparable replacement housing may be considered if housing meeting the criteria is not available on the market.

Effective date. These regulations and procedures are effective March 15, 1973.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
General Manager.

Subpart A—Regulations and Procedures

Sec.
306.1 Purpose.
306.2 Persons eligible for benefits.
306.3 Assurance of adequate replacement housing prior to displacement.
306.4 Definition of decent, safe, and sanitary dwellings.
306.5 Moving and related expenses allowable under section 202(a) of Pub. L. 91-646.
306.6 Exclusions on moving expenses and losses.
306.7 Payments under sections 202 (b) and (c) of Pub. L. 91-646, in lieu of moving and related expenses.
306.8 Submittal of claims.
306.9 Replacement housing payments to homeowners under section 203(a) of Pub. L. 91-646.
306.10 Replacement housing payments to tenants and certain others under section 204 of Pub. L. 91-646.
306.11 Computation of replacement housing payment for displaced tenants—Rental replacement housing payment.
306.12 Disbursement of rental replacement housing payment.
306.13 Purchases-replacement housing payment.
306.14 Computation of replacement housing payments for certain others.
306.15 Initiation of negotiations.
306.16 Relocation assistance advisory services under section 205 of Pub. L. 91-646.
306.17 Federally assisted programs.
306.18 Uniform real property acquisition policy.
306.19 Surrender of possession.
306.20 Rent after acquisition.
306.21 Tenants' rights in improvements.
306.22 Expense of transfer of title and proration of taxes.
306.23 Administrative review.

Subpart B—[Reserved]

AUTHORITY: 48 Stat. 58, as amended (16 U.S.C. 831-831dd).

Subpart A—Regulations and Procedures

§ 306.1 Purpose.

The purpose of the regulations and procedures in this Subpart A is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894 (42 U.S.C. 4601) and the guidelines therefor in Attachment A to OMB Circular No. A-103, of May 1, 1972.

§ 306.2 Persons eligible for benefits.

(a) Those eligible for benefits under these regulations are those persons, including individuals, partnerships, corporations, or associations, who on or after January 2, 1971, move from real property, or move their personal property from real property, as a result of TVA's acquisition of such real property, or move as the result of a written notice, served personally or by certified (or registered) first-class mail, from TVA to vacate real property. Also eligible, but only for payment of moving and related expenses as provided in §§ 306.5-306.7 and for relocation assistance advisory service as provided in § 306.16, are those persons who move as a result of TVA's acquisition of or as the result of a written notice from TVA to vacate other real property, on which any such person conducts a business or farm operation.

(b) In order to qualify for benefits under these regulations either of two conditions must be met:

(1) The person must have moved (or moved his personal property) as a result of the receipt of a written notice to vacate which may be given before or after initiation of negotiations for acquisition of the property, or

(2) The property must in fact, have been acquired and the person must have moved as a result of its acquisition.

(c) A displaced person may not be paid for more than one move in relation to a single project unless the Chief of TVA's Land Branch of the Division of Property and Supply finds it to be equitable to pay for a subsequent move and gives approval for such payment prior to the subsequent move.

(d) Multiple occupancy of a dwelling shall be treated as a single occupancy in applying replacement housing benefits, except that each family in a dwelling shall be considered separately for such benefits, and individuals may be entitled to receive moving and related expenses. The term "family" refers to all persons living together who are related either by blood, law, guardianship, or adoption.

§ 306.3 Assurance of adequate replacement housing prior to displacement.

Prior to proceeding with any phase of a project which phase will cause the displacement of any person, the Chief of TVA's Land Branch will determine that, within a reasonable period of time prior to displacement, there will be available on a basis consistent with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601), decent, safe, and sanitary dwellings, as described in § 306.4, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment. Such dwellings should be in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents and prices within the financial means of the families and individuals displaced. Such determination will be based on a current survey and analysis of available replacement housing which takes into account the competing demands on available housing. When the survey and analysis indicates a need for new replacement housing, the Division of Navigation Development and Regional Studies will assist Land Branch in securing such housing through coordination with appropriate Federal agencies and local and regional housing authorities, or, if necessary, in developing this capability.

§ 306.4 Definition of decent, safe, and sanitary dwellings.

A decent, safe, and sanitary dwelling is one which is found to be in sound, clean, and weather-tight condition, and which meets local housing codes for the type of dwelling. If there are no applicable local housing codes, a housekeeping unit must include a kitchen with fully usable sink; a stove or connections for same; a separate complete bathroom; hot and cold running water in both the bathroom and kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and regional housing codes. A nonhousekeeping unit should meet local standards customary for boarding houses, hotels, or other congregate living in the area. Any dwelling unit considered suitable as replacement housing should be reasonably convenient to such community facilities as schools, stores, and public transportation. Adjustments may be made only in cases of unusual circumstances or in unique geographic areas.

§ 306.5 Moving and related expenses allowable under section 202(a) of Public Law 91-646.

(a) Upon receipt by TVA of a proper application from any displaced person who is eligible and elects to receive the benefits of section 202(a) of Public Law 91-646, TVA will reimburse the displaced person for expenses incurred by him in moving as follows:

(1) Transportation of himself, his family, and their personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, unless the Chief of TVA's Land Branch determines that relocation beyond the 50-mile area is justified.

(2) Packing and unpacking, crating and uncrating, of personal property.

(3) Storage of personal property for a period not to exceed 12 months when approved in advance by the Chief of TVA's Land Branch as necessary pending availability of a replacement dwelling.

(4) Insurance premium paid to cover loss and damage of personal property while in storage or transit.

(5) Removal and reinstallation of machinery, equipment, appliances, and other items, not acquired by TVA in the purchase of or as real property. Prior to payment under this subparagraph, the displaced person shall agree in writing that the property is personalty and that TVA is released from any payment for the property.

(6) An amount not to exceed the estimated cost of moving commercially, if the displaced person accomplishes the move himself.

(7) Expenses, not to exceed $500, unless the Chief of TVA's Land Branch determines that a greater amount is justified, in searching for a replacement business or farm as follows:

(i) Actual travel costs.

(ii) Extra costs for meals and lodging.

(iii) Time spent in searching at the rate of the displaced person's salary or earnings, not to exceed $10 per hour.

(iv) Broker or realtor fees in locating a replacement business or farm operation, provided the Chief of TVA's Land Branch has approved such employment in advance.

(b) When an item of personal property which is used in connection with any business or farm operation is not moved but is sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the cost of moving, whichever is less.

(c) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the sole judgment of the Chief of TVA's Land Branch, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision is applicable in such cases as the moving of junk yards, stockpiled sand, gravel, minerals, metals, and similar items of personal property.

(d) If the cost of moving or relocating an outdoor advertising display is determined to be equal to or in excess of the in-place value of the display, TVA may at its option acquire such display as a part of the real property.

(e) In the case of a business or farm operation, if the displaced person does not move the personal property he shall be required to make a bona fide effort to sell it and will be eligible for reimbursement for the reasonable cost incurred. If the personal property is sold and the business or farm operation is reestablished, the displaced person is entitled to payment provided in paragraph (b) of this section. If the business or farm operation is discontinued, the displaced person is entitled to the difference between the in-place value of the personal property and the sale proceeds, but in no event shall such payment exceed the cost of moving 50 miles. If the personal property is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which would have been received from the sale of the item, but in no event shall such payment exceed the cost of moving 50 miles. The cost to TVA in removing abandoned personal property shall not be considered as an offsetting charge against payments to the displaced person.

§ 306.6 Exclusions on moving expenses and losses.

Reimbursement for moving expenses shall not include the following:

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures, improvements, or other real property in which the displaced person reserve ownership.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of goodwill.

(f) Loss of trained employees.

(g) Personal injury.

(h) Cost of preparing the application for moving and related expenses.

(i) Modification of personal property to adapt it to the replacement site, except when required by law.

(j) Loss of profits.

(k) Such other items as the Chief of TVA's Land Branch determines should be excluded.

§ 306.7 Payments under sections 202 (b) and (c) of Public Law 91-646, in lieu of moving and related expenses.

(a) *Dwellings.*—Any displaced person eligible for payments under § 306.5 of this subpart who is displaced from a dwelling may elect to accept the following payments in lieu of the payments authorized therein:

(1) A dislocation allowance of $200; and

(2) A moving expense allowance, not to exceed $300, based on current moving expense schedules approved by the Federal Highway Administration. A displaced person who elects to receive a payment based on a schedule shall be paid under the schedule used in the jurisdiction in which the displacement occurs, regardless of where he relocates.

(b) *Business and farm operations.*—Any person eligible for payments under § 306.5 who is displaced from his place of business or from his farm operation may elect to accept, in lieu of the payments authorized under § 306.5, a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. The term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired, or during such other period as the Chief of TVA's Land Branch determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. (If a business or farm operation has no net earnings, or has suffered losses during the period used to compute "average annual net earnings," it may nevertheless receive a $2,500 minimum payment.)

(c) To be eligible for payment under § 306.7(b), a business (other than a nonprofit organization) must contribute materially to the income of the displaced owner. Part-time family occupations which do not contribute materially to a displaced person's income are not eligible. Also, no business relocation payment shall be made under § 306.7(b) unless the Chief of TVA's Land Branch is satisfied that the business (including a nonprofit organization) cannot be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States which is engaged in the same or similar business. In determining whether the business cannot be relocated without a substantial loss of its existing patronage, the following factors will be considered:

(1) The type of business conducted by the displaced person;

(2) The nature of the clientele of the displaced concern; and

(3) The relative importance of the present and proposed location of the displaced business.

(d) Where an entire farm is not acquired, payment under § 306.7(b) will be made only if the Chief of TVA's Land Branch determines that prior to its acquisition the farm met the definition of a farm operation set out in section 101(8) of Public Law 91-646 and that the property remaining after acquisition is no longer an economic farm unit.

§ 306.8 Submittal of claims.

All claims for reimbursement of moving expenses or for payments in connection with such expenses must be submitted to the Chief of TVA's Land Branch on prescribed forms no later than 18 months after the move is completed.

§ 306.9 Replacement housing payments to homeowners under section 203(a) of Public Law 91-646.

(a) In addition to payments for moving and related expenses, a displaced

person may receive payment not in excess of $15,000 if such person:

(1) Was displaced from a dwelling actually owned ("owned" refers to an interest in the title which allows absolute physical control) and occupied by him for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of the property on which the dwelling is located, and

(2) Purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of 1 year from the date he receives payment for the acquired dwelling or the date he moves from said dwelling, whichever is the later date.

(b) Payment under this § 306.9 shall consist of the following:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by TVA, equals the reasonable cost of a comparable replacement dwelling as established by TVA. A comparable replacement dwelling for such purpose shall be deemed to be one which is decent, safe, and sanitary and as functionally equivalent to and substantially the same as the acquired dwelling (but not excluding newly constructed housing) with respect to the number of rooms, area of living space, age, state of repair, neighborhood, and places of employment, and is within the financial means of the displaced family or individual: *Provided,* That if no dwelling meeting these basic criteria is available on the market, the Chief of TVA's Land Branch, upon a proper finding of the need therefor, may consider available housing exceeding such criteria.

(2) The amount, if any, that will compensate the displaced person for any increased interest cost he may be required to pay for financing the acquisition of such comparable replacement dwelling. Such payment shall be made only if the dwelling. The amount of such payment bered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. The amount of such payment shall be based on the present value of the reasonable cost of the additional amount of interest, including points, if any, on that portion of the amount financed which does not exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the dwelling.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling: *Provided,* That no payment shall be made for prepaid expenses or for any fee, cost, charge, or expense which is determined to be a part of the finance charge under the Truth in Lending Act, title 1 of Public Law 90-321, 82 Stat. 146 (15 U.S.C. 1601), and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System (12 CFR Part 226).

(c) The amount established by § 306.9 (b)(1) as the differential payment for the replacement housing sets the upper limit of such payment. To qualify for the full amount the displaced person must purchase and occupy a decent, safe, and sanitary dwelling equal to or higher in price than the reasonable cost of a comparable replacement dwelling as established by TVA. If the displaced person on his own voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price:

(1) Less than the reasonable cost of a comparable replacement dwelling as established by TVA, the differential payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling;

(2) Less than the acquisition price of the acquired dwelling, no differential payment shall be made.

§ 306.10 Replacement housing payments to tenants and certain others under section 204 of Public Law 91-646.

(a) TVA will make a payment to or for any person displaced from any dwelling who is not eligible to receive a payment under § 306.9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Tenants and other persons occupying the property shall be so advised when negotiations for the property are initiated with the owner thereof. Such payment shall be either:

(1) The amount computed under § 306.11 to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, and reasonably accessible to his place of employment, but not to exceed $4,000; or,

(2) The amount necessary to enable such person to make a downpayment, including incidental expenses described in § 306.9(b)(3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000 in making the downpayment.

(b) An owner-occupant otherwise eligible for a payment under § 306.9 but who rents instead of purchases a replacement dwelling is eligible for replacement housing as a tenant (see §§ 306.11 and 306.14).

§ 306.11 Computation of replacement housing payment for displaced tenants—Rental replacement housing payment.

The Chief of TVA's Land Branch may establish the amount necessary to rent a suitable replacement dwelling either by establishing a schedule or by using a comparative method.

(a) *Schedule method.* The payment should be computed by determining the amount necessary to rent a suitable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent is reasonable or, if not reasonable, 48 times the monthly economic rent for the dwelling unit. For the purpose of these regulations, economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required.

(b) *Comparative method.* The average month's rent may be determined by selecting one or more dwellings representative of the dwelling unit acquired, available on the private market, which meet the definition of a suitable replacement dwelling. The payment should be computed by determining the amount necessary to rent for 4 years a suitable replacement dwelling and subtracting from the amount so determined 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent is reasonable or, if not reasonable, 48 times the monthly economic rent for the dwelling unit established by TVA.

§ 306.12 Disbursement of rental replacement housing payment.

(a) Rental replacement housing payments will be made to or for eligible displacees. Such payments may be made in a lump sum or installments depending on the term and amount of the lease or rental agreement. Other factors influencing the type or interval of payment are the type of property, the tenant's income, and local custom. Before making rental replacement housing payments determination will be made that the tenant is living in decent, safe, and sanitary housing as defined in § 306.4.

(b) If an onsite inspection is not practical to verify that the claimant is still occupying decent, safe, and sanitary housing, the claimant may make such verification by written certification to the Chief of TVA's Land Branch or his designated representative.

§ 306.13 Purchases-replacement housing payment.

(a) If the tenant elects to purchase a replacement dwelling instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a downpayment and to cover incidental expenses on the purchase of replacement housing.

(b) The downpayment shall be the amount necessary to make a downpayment on a suitable replacement dwelling. Determination of the amount "necessary" for such downpayment shall be based on the amount of downpayment that would be required for a conventional

loan. The maximum payment may not exceed $4,000, except that if more than $2,000 is required, the tenant must match any amount in excess of $2,000 by an equal amount in making the downpayment.

(c) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs must be shown on the closing statement.

§ 306.14 Computation of replacement housing payments for certain others.

(a) A displaced owner-occupant eligible under § 306.9 who elects to rent rather than purchase a replacement dwelling may receive a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as shown in § 306.11 with the following additional criteria:

(1) The present rental rate for the acquired dwelling shall be economic rent as determined by market data;

(2) The payment may not exceed the amount which the displaced owner-occupant would have received had he elected to receive a replacement housing payment under § 306.9; and

(3) The payment shall be deducted from any amount due under § 306.9 in the event the displaced owner-occupant subsequently purchases replacement housing as defined in § 306.9 within the prescribed time limit of 1 year.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under § 306.9 because of the 180-day occupancy requirement but qualifies under § 306.10 and elects to rent is eligible for a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as shown in § 306.11, except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(c) A displaced owner-occupant who does not qualify for a replacement housing payment under § 306.9 because of the 180-day occupancy requirement but qualifies under § 306.10 and elects to purchase a replacement dwelling is eligible for a replacement housing down payment pursuant to § 306.10(a)(2), which payment shall be computed in the same manner as shown in § 306.13.

§ 306.15 Initiation of negotiations.

The term "initiation of negotiations" for real property means the date TVA's offer for the real property to be acquired is presented in writing. When an offer to purchase is presented by mail, the initiation of negotiations will be considered to be the third day after the date of mailing. TVA will advise tenants and other occupants of the date negotiations begin with the owner.

§ 306.16 Relocation assistance advisory services under section 205 of Public Law 91-646.

TVA's Division of Reservoir Properties will establish and maintain a program to provide advice and assistance, where needed, to persons displaced as a result of its acquisition of real property. Such program shall provide pertinent and current information regarding the availability, prices, and rentals of proper replacement properties; offer assistance in obtaining and relocating to such properties; and take such steps required to secure the cooperation of other agencies which may be of assistance in order to minimize hardships and assure that displaced persons receive the maximum assistance available to them. To the extent that the services of a central relocation agency are available to render assistance, such services will be used. In conducting this program, the Division of Reservoir Properties will coordinate its activities with the Division of Agricultural Development, the Division of Navigation Development and Regional Studies, and the Land Branch.

§ 306.17 Federally assisted programs.

TVA has no programs affording Federal financial assistance within the meaning of Public Law 91-646. If any such programs should be instituted, appropriate relocation assistance procedures relating thereto will be adopted.

§ 306.18 Uniform real property acquisition policy.

(a) Before negotiations are initiated for acquisition of real property, the Chief of TVA's Land Branch will cause the property to be appraised and establish an amount believed to be just compensation therefor. The appraiser shall afford the owner or his representative an opportunity to accompany him during his inspection of the property.

(b) When negotiations are initiated to acquire real property, the owner will be given a written statement of, and summary of the basis for, the amount estimated as just compensation. The statement will identify the property and the interest therein to be acquired, including buildings and other improvements to be acquired as a part of the real property, the amount of the estimated just compensation, and the basis therefor. If only a portion of the property is to be acquired, the statement will include a statement of damages and benefits, if any, to the remainder.

§ 306.19 Surrender of possession.

Possession of real property will not be taken until the owner has been paid the agreed purchase price or TVA's estimate of just compensation has been deposited in court in a condemnation proceeding. To the greatest extent practicable, no person will be required to move from property acquired by TVA without at least 90 days' written notice thereof.

§ 306.20 Rent after acquisition.

If TVA rents real property acquired by it to the former owner or former tenant, the amount of rent shall not exceed the fair rental value on a short-term basis.

§ 306.21 Tenants' rights in improvements.

Tenants of real property being acquired by TVA will be paid just compensation for any improvements owned by them, whether or not they might have a right to remove such improvements under the terms of their tenancy. Such payment will be made only upon the condition that all right, title, and interest of the tenant in such improvements shall be transferred to TVA and upon the further condition that the owner of the real property being acquired shall execute a disclaimer of any interest in said improvements.

§ 306.22 Expense of transfer of title and proration of taxes.

In connection with the acquisition of real property by TVA:

(a) TVA will, to the extent it deems fair and reasonable, bear all expenses incidental to the transfer of title to the United States, including penalty costs for the prepayment of any valid preexisting recorded mortgage;

(b) Real property taxes shall be prorated to relieve the seller from paying taxes which are allocable to a period subsequent to vesting of title in the United States or the date of possession, whichever is earlier.

§ 306.23 Administrative review.

(a) Determinations by the Chief of TVA's Land Branch as to payments under these regulations shall be final. However, in the event of dissatisfaction by any displaced person the following rights of review will be followed:

(b) Any dispute arising out of or connected in any way with the application of these regulations and Public Law 91-646, which is not disposed of by agreement, shall be decided by the Chief of TVA's Land Branch who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the claimant. This decision shall be final and conclusive unless within 30 days from the date of receipt of such copy the displaced person mails or otherwise furnishes a written appeal addressed to the General Manager, Tennessee Valley Authority, Knoxville, Tenn. 37902. In connection with any such appeal proceeding, the claimant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the General Manager or his duly authorized representative for the determination of such appeals shall be in writing and furnished to the claimant and shall be final and conclusive.

Subpart B—[Reserved]

[FR Doc.73-2463 Filed 2-7-73;8:45 am]

Title 19—Customs Duties

CHAPTER I—BUREAU OF CUSTOMS, DEPARTMENT OF THE TREASURY

[T.D. 73-46]

PART 6—AIR COMMERCE REGULATIONS

Revocation of International Airport Status of Greater Buffalo International Airport, Buffalo, NY

On September 28, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 20253),

which proposed to amend § 6.13 of the Customs regulations, revoking the international airport status of Greater Buffalo International Airport, Buffalo, N.Y. Two comments were received in response to this notice, both being resolved with no change necessitated.

Accordingly, § 6.13 of the Customs regulations is amended by deleting "Buffalo, New York" and "Greater Buffalo International Airport", from the alphabetical list of international airports.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended; 19 U.S.C. 66, 1624, 49 U.S.C. 1509)

Effective date. This amendment shall become effective on March 12, 1973.

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved: January 31, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-2520 Filed 2-7-73;8:45 am]

Title 20—Employees' Benefits

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 238—RESIDUAL LUMP-SUM PAYMENTS

Miscellaneous Amendments

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (50 Stat. 314, as amended; 45 U.S.C. 228j), § 238.2(a) of Part 238 (20 CFR 238.2(a)) of the regulations under such act is amended and § 238.8 is added by Board Order 73-4, dated January 17, 1973, to read as follows:

§ 238.2 Residual lump-sum payments.

(a) *Conditions of payment.* A residual lump sum (an amount based on the employee's percentage of compensation) is payable to one or more of the persons described in paragraph (b) of this section under the following conditions:

(1) The employee died on or after January 1, 1947.

(2) No benefits, or no further benefits, will by reason of the employee's death be payable under part 237 of this chapter, or under title II of the Social Security Act on the basis of combined credits. Notwithstanding this provision, the residual lump sum may nevertheless be paid:

(i) In accordance with the provisions of § 238.4 in cases where the surviving widow, widower, or parent elects the residual lump sum in lieu of future monthly benefits; or

(ii) In accordance with the provision of § 38.8 in cases where the lump-sum death benefit under title II of the Social Security Act has not been paid.

(3) The employee's percentage of compensation exceeds the benefits deductible.

* * * * *

§ 238.8 Payment of residual lump sum when Social Security Act lump sum is unpaid.

(a) *Conditions of payment.* The residual lump sum may be paid to one or more of the persons described in § 238.2(b) in any case where all or part of the lump-sum death benefit under title II of the Social Security Act on the basis of combined credits remains unpaid if, except for such lump-sum death benefit, the residual lump sum would otherwise be payable.

(b) *Amount of payment.* The amount of the residual lump sum payable under the provisions of this section is the amount determined under § 238.2 c) except that the "benefits deductible" shall for the purposes of this section include an additional deductible equal to the maximum amount of the lump-sum death benefit that could be paid to any person under title II of the Social Security Act based on the earnings of any deceased individual. No payment shall be made under this section except as provided in paragraph (c) of this section, in any case where the amount of the residual lump sum as determined under § 238.2(c) is less than the maximum amount of such lump-sum death benefit.

(c) *Subsequent payment of the amount deducted for the Social Security Act lump sum.* If no application for the Social Security Act lump sum is filed before the expiration of the 2-year statutory period (or any extension of that period) for filing such application or an application is timely filed and such lump-sum death benefit has been paid, and no further benefits will be payable under title II of the Social Security Act by reason of the employee's death on the basis of combined earnings, one or more of the persons described in § 238.2(b) may, subject to the provision of § 238.5, be paid:

(1) In cases where the Social Security Act lump-sum death benefit was paid, an amount equal to the excess of the additional deductible under paragraph (b) of this section over the amount of the lump-sum death benefit paid or an amount equal to the excess of the residual lump sum determined under § 238.2(c) over the amount of the lump-sum death benefit paid, whichever is smaller; or

(2) In cases where the lump-sum death benefit was not paid,

(i) The amount of the additional deductible under paragraph (b) of this section; or

(ii) The residual lump sum determined under § 238.2(c) if such lump sum was less than the additional deductible under paragraph (b) of this section.

Dated: February 1, 1973.

By authority of the Board.

R. F. BUTLER,
Secretary of the Board.

[FR Doc.73-2419 Filed 2-7-73;8:45 am]

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

Deductions, Reductions, Nonpayments, and Increases; Good Cause for Failure to File Reports Timely

On September 12, 1972, there was published in the FEDERAL REGISTER (37 FR 18471) a notice of proposed rule making with proposed amendments to Subpart E of Regulations No. 4. The proposed amendments to the regulations provide that prior to imposing a penalty deduction against an individual for (1) failure to report timely certain deduction events (engaging in noncovered remunerative activity outside the United States or not having care of a child), or (2) failure, under certain conditions, to make a timely report of his earnings for a taxable year, the individual must be afforded an opportunity to establish good cause for such failure and a finding as to good cause must be made.

Interested persons were given the opportunity to submit within 30 days, data, views, or arguments with regard to the proposed changes. The 30-day period has passed and no comments have been received. Accordingly, the amendments as set forth below, are adopted as proposed.

(Secs. 203, 205, and 1102, 53 Stat. 1367, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; 42 U.S.C. 403, 405, and 1302)

Effective date. The amendments shall be effective on February 8, 1973.

Dated: January 12, 1973.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

Subpart E of Regulations No. 4 is amended as set forth below.

1. Section 404.451 is amended by revising paragraph (a) to read as follows:

§ 404.451 Penalty deductions for failure to report within prescribed time limit noncovered remunerative activity outside the United States or not having care of a child.

(a) *Penalty for failure to report.* If an individual (or the person receiving benefits on his behalf) fails to comply with the reporting obligations of § 404.450 within the time specified in § 404.450 and it is found that good cause for such failure does not exist (see § 404.454), a penalty deduction is made from the individual's benefits in addition to the deduction described in § 404.417 (relating to noncovered remunerative activity outside the United States) or § 404.421 (relating to failure to have care of a child).

* * * * *

2. Section 404.453 is amended by revising paragraph (a) to read as follows:

§ 404.453 Penalty deductions for failure to report earnings timely.

(a) *Penalty for failure to report earnings; general.* Penalty deductions are imposed against an individual's benefits, in addition to the deductions required because of his excess earnings (see § 404.415), if:

(1) He fails to make a timely report of his earnings as specified in § 404.452 for a taxable year beginning after 1954;

(2) It is found that good cause for failure to report earnings timely (see § 404.454) does not exist;

(3) A deduction is imposed because of his earnings (see § 404.415) for that year; and

(4) He received and accepted any payment of benefits for that year.

* * * * *

3. Section 404.454 is revised to read as follows:

§ 404.454 Good cause for failure to make required reports.

(a) *General.* The failure of an individual to make a timely report under the provisions described in §§ 404.450 and 404.452 will not result in a penalty deduction if the individual establishes to the satisfaction of the Administration that his failure to file a timely report was due to good cause. Before making any penalty determination as described in §§ 404.451 and 404.453, the individual shall be advised of the penalty and good cause provisions and afforded an opportunity to establish good cause for failure to report timely. The failure of the individual to submit evidence to establish good cause within a specified time may be considered a sufficient basis for a finding that good cause does not exist (see § 404.701(c)). In determining whether good cause for failure to report timely has been established by the individual, consideration is given to whether the failure to report within the proper time limit was the result of untoward circumstances, misleading action of the Administration, or confusion as to the requirements of the Act resulting from amendments to the Act or other legislation. For example, "good cause" may be found where failure to file a timely report was caused by:

(1) Serious illness of the individual, or death or serious illness in his immediate family;

(2) Inability of the individual to obtain, within the time required to file the report, earnings information from his employer because of death or serious illness of the employer or one in the employer's immediate family; or unavoidable absence of his employer; or destruction by fire or other damage of the employer's business records;

(3) Destruction by fire, or other damage, of the individual's business records;

(4) Transmittal of the required report within the time required to file the report, in good faith to another Government agency even though the report does not reach the Administration until after the period for reporting has expired;

(5) Unawareness of the statutory provision that an annual report of earnings is required for the taxable year in which the individual attained age 72 provided his earnings for such year exceeded the applicable amount, e.g., $1,680 for a 12-month taxable year ending after December 1967 (see § 404.431);

(6) Failure on the part of the Administration to furnish forms in sufficient time for an individual to complete and file the report on or before the date it was due, provided the individual made a timely request to the Administration for the forms;

(7) Belief that an extension of time for filing income tax returns granted by the Internal Revenue Service was also applicable to the annual report to be made to the Social Security Administration; or

(8) Reliance upon a written report to the Social Security Administration made by, or on behalf of, the beneficiary before the close of the taxable year, if such report contained sufficient information about the beneficiary's earnings or work, to require suspension of his benefits (see § 404.456) and the report was not subsequently refuted or rescinded.

(b) *Notice of determination.* In every case in which it is determined that a penalty deduction should be imposed, the individual shall be advised of the penalty determination and of his reconsideration rights. If it is found that good cause for failure to file a timely report does not exist, the notice will include an explanation of the basis for this finding; the notice will also explain the right to partial adjustment of the overpayment, in accordance with the provisions of § 404.502(c).

(c) *Good cause for subsequent failure.* Where circumstances are similar and an individual fails on more than one occasion to make a timely report, good cause normally will not be found for the second or subsequent violation.

[FR Doc.73-2501 Filed 2-7-73;8:45 am]

[Regs. 4, 5, 10, 22, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965—)

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969—)

PART 422—ORGANIZATION AND PROCEDURES

Hearing Examiner Title Change

On August 19, 1972, there was published in the FEDERAL REGISTER (37 FR 16787) an amendment to the regulations of the Civil Service Commission (5 CFR Part 930) changing the title "hearing examiner" to "Administrative Law Judge." In order to conform the regulations of the Social Security Administration to this change in title, the regulations of the Social Security Administration (20 CFR Part 404, 405, 410, and 422) are amended as follows: Wherever the term "hearing examiner" appears, the term "Administrative Law Judge" is substituted therefor.

(Sec. 205, 53 Stat. 1368, as amended, 42 U.S.C. 405)

Effective date. This amendment is effective as of August 19, 1972.

Dated: January 12, 1973.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

[FR Doc.73-2499 Filed 2-7-73;8:45 am]

[Regs. No. 5,-further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965—)

Payment of Offset Amounts to Beneficiary or Other Person

On May 16, 1972, there was published in the FEDERAL REGISTER (37 FR 9674) a notice of proposed rule making with a proposed amendment to Subpart F of Regulations No. 5. The proposed amendment adding new § 405.622 to Subpart F of Regulations No. 5 would allow the Social Security Administration to make direct refund to a beneficiary or other person from title XVIII (Medicare) payment amounts otherwise due a former participating provider of services which has failed to refund moneys incorrectly collected from the beneficiary (or other person) for items and services for which the beneficiary is entitled to have payment made under the health insurance program. All comments submitted with respect to the proposed amendment were given due consideration.

As a result of comments received, the following changes are made:

1. A new paragraph (g) is added to § 405.1505 specifically designating the determination under § 405.622 to make direct refund to a beneficiary or other person as an administrative action not constituting an initial determination.

2. Additional wording and a parenthetical reference to § 405.1505(g) has been included in paragraph (a) of § 405.622 in order to further clarify the nature of the determination under § 405.622 as an administrative action not constituting an initial determination.

Accordingly, with these changes and additions, the proposed amendments are adopted as set forth below.

(Sections 1102, 1866, and 1871, 49 Stat. 647, as amended, 79 Stat. 314, 42 U.S.C. 1302, 1395 et seq.)

Effective date. These amendments shall be effective on February 8, 1973.

Dated: January 12, 1973.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

1. Subpart F of Part 405, Chapter III, Title 20, is amended by adding a new § 405.622 to read as follows:

§ 405.622 Incorrect collections; payment of offset amounts to beneficiary or other person.

(a) In order to carry out a provider of services' section 1866 agreement commitment to refund amounts incorrectly collected (see § 405.607(b)), the Secretary may, as an administrative action (see § 405.1505(g)), determine that amounts offset in accordance with the provisions of § 405.620(a) are to be paid directly by the Administration to the beneficiary or other person from whom the provider received the incorrect collection, if:

(1) The Secretary finds that such provider has failed, following the Secretary's written request to the provider (see paragraph (b) of this section), to refund the amount of the incorrect collection to the beneficiary or other person from whom the provider collected the moneys; and

(2) The agreement between the provider and the Secretary has been terminated in accordance with the provisions of § 405.613 or § 405.614; or the provider has undergone a change of ownership as described in §§ 405.625 and 405.626.

(b) Before making any such determination to make payment under the provisions of paragraph (a) of this section, the Secretary shall give written notice to the provider (1) explaining that an incorrect collection was made and the amount thereof; (2) requesting that refund of the incorrect collection be made by the provider to the beneficiary or other person from whom the provider collected the moneys; and (3) advising of the Secretary's intention to make a determination under paragraph (a) of this section. The notice will afford an authorized official of the provider an opportunity to submit, within 15 days from receipt of such notice, such written statement or evidence as the provider may wish to make with respect to such incorrect collection and/or offset amounts. Such written statement or evidence shall be considered in making such determination.

(c) Payment to a beneficiary or other person under the provisions of paragraph (a) of this section shall not exceed the amount of the incorrect collection; and such payment shall be considered as payment made to the provider.

2. A new paragraph (g) is added to § 405.1505 to read as follows:

* * * * *

§ 405.1505 Administrative actions which are not initial determinations.

* * * * *

(g) The determination in accordance with § 405.622 to make direct refund to a title XVIII beneficiary or other person from payment amounts otherwise due a former participating provider which has failed to refund moneys incorrectly collected from the beneficiary or other person.

[FR Doc.73-2498 Filed 2-7-73;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER F—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS OTHER THAN THE FOOD, DRUG, AND COSMETIC ACT

PART 273—BIOLOGICAL PRODUCTS

Transfer of Regulations; Correction

In FR Doc. 72-12591, appearing at page 15993 in the issue of Wednesday, August 9, 1972, an additional change, which was inadvertently omitted in the procedural transfer, should be made to reflect the transfer of functions from the Division of Biologics, National Institutes of Health, to the new Bureau of Biologics, Food and Drug Administration. Section 273.101 *Definitions* is hereby amended by deleting and reserving paragraph (d).

Dated: February 1, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-2409 Filed 2-7-73;8:45 am]

PART 295—REGULATIONS UNDER THE POISON PREVENTION PACKAGING ACT OF 1970

Child Protection Packaging Standards for Certain Liquid Kindling and/or Illuminating Preparations Containing Petroleum Distillates

Correction

In FR Doc. 73-1673 appearing at page 2757 in the issue for Tuesday, January 30, 1973, in the second line of the final paragraph, the effective date reading "September 27, 1973" should read "October 29, 1973".

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7242]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Section 170(b)(1)(A) Organizations

Correction

In FR Doc. 72-22454 appearing at page 12 of the issue for Wednesday, January 3, 1973, the following changes should be made:

1. In the seventh line of § 1.170A-9(e)(7)(ii), "(3)(i)" should read "(2)" and "if" should read "or".

2. The final paragraph in the document designated "(vi) Section 509(a)(2) or (3) organization." should be designated "(i) *Section 509(a) (2) or (3) organization.*".

[T.D. 7248]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Termination of Private Foundation Status

Correction

In FR Doc. 72-22462 appearing at page 860 in the issue for Friday, January 5, 1973, the words "organization shall be treated for such" should be inserted after the 10th line, reading "ing the continuous 60-month period, such" in § 1.507-2(f)(1)(i).

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Approval of Anhydrous Ammonia Equipment

On July 29, 1972, a document was published in the FEDERAL REGISTER proposing to amend the standards relating to the approval of appurtenances used in the storage and handling of anhydrous ammonia by recognizing additional sources of such approval. As amended, the standards would include as sources of approval not only Underwriters Laboratories, Inc., and Factory Mutual Engineering Corp., but also any other nationally recognized testing laboratory using nationally recognized testing standards; certain public authorities under specified conditions; and in the case of equipment installed before February 8, 1973, the American National Standard for the Storage and Handling of Anhydrous Ammonia, K61.1, or the Fertilizer Institute Standards for the Storage and Handling of Agricultural Anhydrous Ammonia, M-1, in effect at the time of installation. It also proposed a redefinition of the word "appurtenances". (37 FR 15316)

All comments received in response to the proposal supported its adoption. It was pointed out however, that the proposal still did not provide for custom units that were not tested by a nationally recognized laboratory, or by any regulatory agency, even though such units could be shown to be functionally safe. To deal with this problem the material in § 1910.111(b)(1)(iv) has been added. The standard contained in § 1910.111(b)(1)(iii) has also been rewritten to clarify its scope. As so re-

vised the proposal is hereby adopted to read as set forth below. As these amendments are intended to relieve a restriction they shall become effective immediately.

1. As amended 29 CFR 1910.111(a)(2)(i) and (b)(1) read as follows:

§ 1910.111 Storage and handling of anhydrous ammonia.

(a) *General* * * *

(2) *Definitions.* As used in this section:

(i) "Appurtenances"—All devices such as pumps, compressors, safety relief devices, liquid-level gaging devices, valves and pressure gages.

* * * * *

(b) *Basic rules.* * * *

(1) *Approval of equipment and systems.* Each appurtenance shall be approved in accordance with paragraph (b)(1)(i), (ii), (iii), or (iv) of this section.

(i) It was installed before February 8, 1973, and was approved, tested, and installed in accordance with either the provisions of the American National Standard for the Storage and Handling of Anhydrous Ammonia, K61.1, or the Fertilizer Institute Standards for the Storage and Handling of Agricultural Anhydrous Ammonia, M-1, in effect at the time of installation; or

(ii) It is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriter's Laboratories Inc. and Factory Mutual Research Corporation; or

(iii) It is a type which no nationally recognized testing laboratory does, or will undertake to, accept, certify, list, label, or determine to be safe; and such equipment is inspected or tested by any Federal, State, municipal, or other local authority responsible for enforcing occupational safety provisions of a Federal, State, municipal or other local law, code, or regulation pertaining to the storage, handling, transport, and use of anhydrous ammonia, and found to be in compliance with either the provisions of the American National Standard for the Storage and Handling of Anhydrous Ammonia, K61.1, or the Fertilizer Institute Standards for the Storage and Handling of Agricultural Anhydrous Ammonia, M-1, in effect at the time of installation; or

(iv) It is a custom-designed and custom-built unit, which no nationally recognized testing laboratory, or Federal, State, municipal or local authority responsible for the enforcement of a Federal, State, municipal, or local law, code or regulation pertaining to the storage, transportation and use of anhydrous ammonia is willing to undertake to accept, certify, list, label or determine to be safe, and the employer has on file a document attesting to its safe condition following the conduct of appropriate tests. The document shall be signed by a registered professional engineer or other person having special training or experience sufficient to permit him to form an opinion as to safety of the unit involved. The document shall set forth the test bases, test data and results, and also the qualifications of the certifying person.

(v) For the purposes of this paragraph (b)(1), the word "listed" means that equipment is of a kind mentioned in a list which is published by a nationally recognized laboratory which makes periodic inspection of the production of such equipment, and states such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner. "Labeled" means there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory which, makes periodic inspections of the production of such equipment, and whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner. "Certified" means it has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be safe for use in a specified manner, or is of a kind whose production is periodically inspected by a nationally recognized testing laboratory, and it bears a label, tag, or other record of certification.

* * * * *

2. The following entry is added to the list set forth in § 1910.116:

§ 1910.116 Standards organizations.

* * * * *

Fertilizer Institute, 1015, 18th Street NW., Washington, DC 20036.

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655))

Signed at Washington, D.C., this 2d day of February 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register on January 23, 1973.

[FR Doc.73-2509 Filed 2-7-73;8:45 am]

Title 32—National Defense

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1641—DUTY OF REGISTRANTS

Registrants Classification Procedures

Correction

In FR Doc. 72-20793 appearing at page 25714 in the issue for Saturday, December 2, 1972, in § 1641.7 the sixth line, reading "the 26th anniversary of the date of his", should be transposed so as to become the third line of that section.

Title 32A—National Defense, Appendix

CHAPTER XI—OIL IMPORT APPEALS BOARD

OIAB—RULES AND PROCEDURES

Correction

In FR Doc. 73-1630 appearing at page 2684 in the issue for Monday, January 29, 1973, in Sec. 21, the fourth line reading "paragraphs (a) and (g) of section 4)" should read "paragraphs (a) and (g) of section 4 of the Regulations").

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 262—OPINIONS, ORDERS, ADMINISTRATIVE MANUALS, AND INSTRUCTIONS TO STAFF

Compliance With Summons by Postal Employees

This amendment to Part 262 of this title specifies procedures to be followed if a postal employee is issued a summons requiring testimony or production of records as to matters which may be exempt from public disclosure under 5 U.S.C. 552(b).

Paragraph (b)(1) and (2) of § 262.8 are amended effective February 8, 1973, to read as follows:

§ 262.8 Compliance with subpena duces tecum court orders and summonses.

* * * * *

(b) *Compliance with summons.* (1) Comply with a summons requring an appearance in court. Do not testify as to any matters for which an exemption under § 261.2(c) may be claimed. Call the Regional Counsel for instructions relating to exemptions.

(2) Do not present inspectors' reports or Inspection Service records in either State or Federal courts in which the United States is not a party in interest, unless authorized by the Regional Chief Inspector, who will make a decision after consulting with Regional Counsel. If an attempt is made to compel the production of matters, decline to produce the information or matter, and state it may be exempted and cannot be disclosed or produced without specific approval of the Regional Chief Inspector, who will make a decision after consulting with Regional Counsel. The Postal Service will offer every possible assistance to the courts, but the questions of disclosing information for which an exemption may be claimed is a matter of discretion.

(5 U.S.C. 552, 39 U.S.C. 401)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.73-2476 Filed 2-7-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Miscellaneous Amendments

On October 28, 1972 (37 FR 23087), the Agency amended its disapproval of the State of Louisiana's implementation plan control strategy for photochemical oxidants (hydrocarbons) in the Southern Louisiana-Southeast Texas Air Quality Control Region and promulgated regulations to deal with the remaining deficiency in that control strategy. Specifically, the Agency approved State of

Louisiana Regulations 22 and A22 (Control of Volatile Organic Compound Emissions from New and Existing Sources), disapproved the control strategy as incomplete in that it failed to provide for adequate control of hydrocarbon emissions, and prescribed emission limitation and compliance schedule regulations for waste gas disposal sources not covered by the approved State regulations, in order to supplement the State's control strategy.

The amendments to 40 CFR 52.973(b) set forth below are designed to clarify the meaning of certain terms used in the regulation, to correct the Agency's inadvertent failure to expressly exclude ethylene producers from the regulation, and to correct a cross reference. The intended applicability of the regulation is also clarified by the exemption of certain organic compounds which are known to have little or no photochemical reactivity.

This notice also includes revisions to the regulation for review of new and modified sources promulgated for Louisiana on October 28, 1972. These revisions allow the Administration to waive requirements for performance tests after the new or modified source commences operation. It is recognized that compliance with applicable emission limitations can be determined in certain circumstances without the need for performance testing. Also, the list of sources exempt from the new source review requirements is expanded to cover additional sources of minor pollutant contribution. The emissions from the additional sources exempted are similar in magnitude to those sources already exempt and are considered to have an insignificant effect on air quality.

Amendments are also set forth below changing the latest dates for attainment of the national ambient air quality standards for sulfur oxides and particulate matter in Texas. The Texas implementation plan, which contained conflicting statements concerning the intended attainment dates, has subsequently been clarified by the State by supplemental information submitted on November 10, 1972. Accordingly, the latest attainment date for the primary standards has been changed from December 1973 to July 1975, which is consistent with the Clean Air Act and with clarification provided by the State. The dates are underlined because a specific month was not provided and were therefore specified by EPA. The supplemental information indicated that secondary standards would be attained within "reasonable time"; however, no date was provided. The particulate matter and sulfur oxides control strategies for the secondary standards do not require the application of control technology beyond that which is reasonably available. Thus, the latest attainment date for secondary standards is prescribed as July 1975, as required by 40 CFR 51.13(b)(1).

The attainment date table for Texas is also corrected to indicate that the sulfur dioxide air quality levels in the five priority III Regions (Austin-Waco Intrastate, Brownsville-Loredo Intrastate, Metropolitan Dallas-Fort Worth Intrastate, Metropolitan San Antonio Intrastate, and the Texas portion of the Shreveport-Texarkana-Tyler Intrastate Region) are "presently below secondary standards." The attainment dates for the sulfur dioxide ambient air quality standards for these Regions were erroneously listed as December 1973.

Since the amendments have no significant effect on the attainment or maintenance of national standards and impose no additional regulatory burden, the Agency finds that good cause exists for not issuing a notice of proposed rule making, inasmuch as it is unnecessary and for making the amendments effective February 8, 1973 without a deferred effective date.

(42 U.S.C. 1857c-5)

Dated: February 2, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator, Environmental Protection Agency.

Subpart T—Louisiana

In § 52.973, paragraph (b) is revised as follows:

§ 52.973 Control strategy and regulations: Photochemical oxidants (hydrocarbons).

* * * * *

(b) *Regulation for control of hydrocarbon emissions.*

(1) The requirements of this paragraph are applicable to waste gas disposal sources, except those in ethylene producing plants, in the Louisiana portion of the Southern Louisiana-Southeast Texas Interstate Region (§ 81.53 of this chapter).

(2) No owner or operator of a waste gas disposal source to which this paragraph is applicable shall discharge or cause the discharge of organic compounds into the atmosphere in excess of 15 lbs. (6.8 kg) per day (24 hours) from a waste gas disposal source unless the waste gases are incinerated, burned by a smokeless flare, or controlled by some other method approved by the Administrator.

(3) For the purposes of this paragraph:

(i) "Organic compound" means any compound containing carbon and hydrocarbon.

(ii) "Waste gas disposal source" is any point of organic compound process emissions resulting from disposal of emergency and waste gases from petroleum refineries and other hydrocarbon processing plants.

(4) The requirements of paragraph (b)(2) of this section are not applicable to waste gas streams which contain only the following organic compounds, singly or in combination: C_1-C_3 n-parafins, saturated halogenated hydrocarbons, perchloroethylene, benzene, acetylene, acetone, cyclohexanone, ethyl acetate, diethylamine, isobutyl acetate, isopropyl alcohol, methyl benzoate, 2-nitropropane, phenyl acetate, and triethylamine.

In § 52.976, paragraph (b)(8)(iv) is added and paragraph (b)(9)(iii) is revised. As amended, § 52.976 reads as follows:

§ 52.976 Review of new sources and modifications.

* * * * *

(b) * * *

(8) * * *

(iv) The Administrator may waive the requirement for performance tests if the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is being operated in compliance with all State and Federal regulations which are part of the applicable plan.

(9) * * *

(iii) Fuel burning equipment, other than smokehouse generators, which has a heat input of not more than 250 million B.t.u. per hour (62.5 billion gm-cal/hr) and burns only gaseous fuel containing not more than 0.5 grains H_2S per 100 standard cubic feet (5.7 grams/100 standard cubic meters); has a heat input of not more than 1 million B.t.u. per hour (250 million gm-cal/hr) and burns only distillate oil; or has a heat input of not more than 350,000 B.t.u. per hour (88.2 million gm-cal/hr) and burns any other fuel.

Subpart SS—Texas

In § 52.2270, paragraph (c)(2) is revised to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(2) July 31 and November 10, 1972.

Section 52.2279 is revised as follows:

§ 52.2279 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information presented in Texas' plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)
	Primary	Secondary	Primary	Secondary			
Abilene-Wichita Falls Intrastate.	July 1975	July 1975	July 1975	July 1975	(a)	(a)	(a).
Amarillo-Lubbock Intrastate.	July 1975	July 1975	July 1975	July 1975	(a)	(a)	(a).
Austin-Waco Intrastate.	July 1975	July 1975	(a)	(a)	(a)	(a)	July, 1975 [b].
Brownsville-Laredo Intrastate.	July 1975	July 1975	(a)	(a)	(a)	(a)	(a).
Corpus Christi-Victoria Intrastate.	July 1975	July 1975	July 1975	July 1975	July 1975	(a)	July, 1977 [b].
Midland-Odessa-San Angelo Intrastate.	July 1975	July 1975	July 1975	July 1975	(a)	(a)	(a).
Metropolitan Houston Galveston Intrastate.	July 1975	July 1975	July 1975	July 1975	July 1975	(a)	July, 1977 [b].
Metropolitan Dallas-Fort Worth Intrastate.	July 1975	July 1975	(a)	(a)	July 1975	(a)	July, 1975 [b].
Metropolitan San Antonio Intrastate.	July 1975	July 1975	(a)	(a)	(a)	(a)	July, 1975 [b].
Southern Louisiana Southeast Texas Interstate.	July 1975	July 1975	July 1975	July 1975	(a)	(a)	July 1975.
El Paso-Las Cruces Alamogordo Interstate.	July 1975	July 1975	July 1975	July 1975	(a)	July 1975	July, 1975 [b].
Shreveport-Texarkana-Tyler Interstate.	July 1975	July 1975	(a)	(a)	(a)	(a)	(a):

NOTE: Dates or footnotes which are underlined are prescribed by the Administrator because the plan does not provide a specific date.

a. Air quality levels presently below secondary standards.

b. Transportation control strategy is to be submitted no later than February 15, 1973, with the first semiannual report.

[FR Doc.73-2358 Filed 2-7-73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5328]

[Wyoming 34023]

WYOMING

Withdrawal for Reclamation Project

Correction

In FR Doc. 73-1547, appearing in the issue for Friday, January 26, 1973, the third line of the Sixth Principal Meridian reading "Sec. 29, W½SE¼N." should read "Sec. 29, W½NE¼".

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1; Amdt. 1-68]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Revocation of Certain Delegations

Correction

In FR Doc. 73-1604, appearing at page 2692, in the issue of Monday, January 29, 1973, on page 2693, paragraph 1, and the language following it should read as follows:

1. Section 1.47 is amended by revoking the delegation in that paragraph (c) which reads:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(c) Carry out the civil administration of Wake Island under the agreement between the Secretary of Interior and the Secretary of Transportation of August 26, 1967.

* * * * *

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-2; Notice 1]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Tire Selection and Rims for Passenger Cars

This amendment adds alternative rim sizes to Motor Vehicle Safety Standard No. 110 (49 CFR 571.110).

On October 5, 1968, guidelines were published in the FEDERAL REGISTER (33 FR 14964) by which routine additions could be added to Appendix A, Standard No. 109 (49 CFR 571.109), and to Appendix A, Standard No. 110. Under these guidelines the additions become effective 30 days from the date of publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rule making pursuant to the procedures for motor vehicle safety standards (49 CFR Part 533) is followed.

Accordingly, Appendix A of Motor Vehicle Safety Standard No. 110, "Tire Selection and Rims" (49 CFR 571.110) is amended, subject to the 30-day provision indicated above, as specified below.

Effective date: March 8, 1973, if objections are not received.

(Amendments requested by the European Tyre and Rim Technical Organisation.)

1. In Table I-H, the 5.00-B alternative rim is added for 155R13 tire size designation.

2. In Table I-T, the 7-1/2-L alternative rim is added for 205/70R14 tire size designation.

Following is a tabulation of the changes made by this amendment.

FMVSS No. 110—APPENDIX A

TABLE I-H

(Changes made by this amendment only)

Tire size:	Rim
155R13	5.00-B

TABLE I-T

205/70R14	7-1/2-L

(Secs. 103, 119, 201, 202, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407, 1421, 1422; delegations of authority 49 CFR 1.51, 49 CFR 501.8)

Issued January 31, 1973.

ROBERT L. CARTER,
Associate Administrator, Motor Vehicle Programs.

[FR Doc.73-2473 Filed 2-7-73;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER C—ACCOUNTS, RECORDS AND REPORTS

[No. 35733]

THIRTEEN—PERIOD ACCOUNTING YEAR FOR MOTOR CARRIERS

Miscellaneous Amendments

DECEMBER 13, 1972.

Consideration having been given to the matters and things involved in this proceeding, and the said Division, on the date hereof, having made and filed a report herein containing its findings and conclusions, which report is hereby made a part hereof;

It is ordered, That Parts 1206, 1207, 1240 and 1249 of Chapter X of Subchapter C of Title 49 of the Code of Federal Regulations be, and they are hereby, revised as shown hereto.

It is further ordered, That service of this order shall be made on all affected motor carriers of passengers, motor carriers of property, and motor carrier holding companies, and that notice of this

order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

(Secs. 204, 220, 49 Stat. 546, as amended; 563, as amended; 564, as amended; 49 U.S.C. 304, 320, 322.)

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD, *Secretary.*

PART 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS

Instruction "2-3 Accounting period." is revised to read:

2-3 Accounting period.

(a) Each carrier shall keep its books on the basis of either (1) an accounting year of 12 months ending on the 31st day of December in each year, or (2) an accounting year of thirteen 4-week periods ending at the close of one of the last 7 days of each calendar year.

(b) A carrier electing to adopt an accounting year of thirteen 4-week periods shall file with the Commisison a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the Commission.

(c) To avoid repetition, wherever "calendar year" appears in the system of accounts it is intended to include "or an accounting year of thirteen 4-week periods" and wherever "month" appears it is intended to include "or 4-week period."

(d) For each month all transactions applicable thereto, as nearly as can be ascertained (see instruction 2-8), including full accruals, shall be entered in the books of original entry (cash book, purchase journal, etc.), and posted to the general ledger. A trial balance of the general ledger accounts shall be prepared at the close of each month setting out the account number, title and amount of each ledger account. (Mechanical, EDP or ADP print-out documentation producing the equivalent of manually prepared trial balances shall identify balances by account numbers.) At the end of the calendar year the revenue, expense and other income accounts shall be closed into earned surplus or the noncorporate capital accounts; and balance sheet account balances shall be brought forward to the general ledger for the succeeding year.

(e) The final entries for any month shall be made in the general ledger not later than 60 days after the last day of the month for which the accounts are stated, unless otherwise authorized by the Commission, except that the period within which the final entries for the last month of the calendar year shall be made may be extended to such date in March of the following year as shall not interfere with the preparation and filing of annual reports.

(f) No changes shall be made in the accounts for periods covered by quarterly and annual reports that have been filed with the Commission unless the changes have first been authorized by the Commission.

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

Instruction "3 Accounting period." is revised to read:

3 Accounting period.

(a) Each carrier shall keep its books on the basis of either (1) an accounting year of 12 months ending on the 31st day of December in each year, or (2) an accounting year of 13 4-week periods ending at the close of one of the last seven days of each calendar year.

(b) A carrier electing to adopt an accounting year of 13 4-week periods shall file with the Commission a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the Commission.

(c) To avoid repetition, wherever "calendar year" appears in this system of accounts it is intended to include "or an accounting year of 13 4-week periods" and wherever "month" appears it is intended to include "or 4-week period."

(d) For each month all transactions applicable thereto, as nearly as can be ascertained (see instruction 9), including full accruals, shall be entered in the books of original entry (cash book, purchase journal, etc.), and posted to the general ledger. A trial balance of the general ledger accounts shall be prepared at the close of each month setting out the account number, title, and amount of each ledger account. (Mechanical, EDP, or ADP print-out documentation producing the equivalent of manually prepared trial balances shall identify balances by account numbers.) At the end of the calendar year the revenue, expense, and other income accounts shall be closed into earned surplus or the noncorporate capital accounts; and balance sheet account balances shall be brought forward to the general ledger for the succeeding year.

(e) The final entries for any month shall be made in the general ledger not later than 60 days after the last day of the month for which the accounts are stated, unless otherwise authorized by the Commission, except that the period within which the final entries for the last month of the calendar year shall be made may be extended to such date in March of the following year as shall not interfere with the preparation and filing of annual reports.

(f) No changes shall be made in the accounts for periods covered by quarterly and annual reports that have been filed with the Commission unless the changes have first been authorized by the Commission.

PART 1240—CLASSES OF CARRIERS

Subpart D—Motor Carriers

1. Section 1240.4 is amended by revoking the text of paragraph (b), and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively. Redesignated paragraph (b) reads as follows:

§ 1240.4 Classification of motor carriers of passengers.

* * * * *

(b) The class to which any carrier belongs shall be determined by the average of its annual gross operating revenues derived from motor carrier operations for the 3 years immediately preceding the effective date of this rule. If, at the end of any subsequent calendar year, or accounting year of 13 4-week periods, the average of its annual gross operating revenues from motor carrier operations for the 3 preceding years is greater than the maximum or less than the minimum for the class in which the carrier has been grouped, it shall automatically be grouped in the higher or lower class in which it falls because of such increased or decreased average annual gross operating revenues. Any carrier which begins new operations or extends its existing operations subsequent to the effective date of this rule may be classified in accordance with a reasonable estimate of its prospective annual gross operating revenues.

* * * * *

2. Section 1240.5 *Classification of motor carriers of property* is amended by revising paragraph (b) to read:

* * * * *

(b) The class to which any carrier belongs shall be determined by the average of its annual gross operating revenues derived from motor carrier operations as a property carrier for the 3 years immediately preceding the effective date of this rule. If, at the end of any subsequent calendar year, or accounting year of 13 4-week periods, the average of a carrier's annual gross operating revenues from motor carrier operations for the last 3 preceding years is greater than the maximum or less than the minimum for the class in which the carrier has been previously grouped, it shall automatically be grouped in the higher or lower class in which it falls because of such increased or decreased average annual gross operating revenues, and it shall notify the Commission of the change in its status. Any carrier which begins new operations or extends its existing operations subsequent to the effective date of this rule will be classified in accordance with a reasonable estimate of its prospective annual gross operating revenues.

* * * * *

PART 1249—REPORTS OF MOTOR CARRIERS

Section 1249.3 is revised to read:

§ 1249.3 Motor carrier holding companies.

(a) Each person which is not a motor carrier, but which shall be considered a motor carrier subject to provisions of section 220 of the Interstate Commerce Act by reason of effective control over

one or more motor carriers through ownership of securities issued or assumed by such controlled motor carrier or carriers, shall file a report of its financial transactions during the year 1956 in accordance with Motor Carrier Annual Report Form A as prescribed in § 1249.1. Such reports hereby required to be filed shall be complete as to all schedules, declarations, replies, attachments, and other requirements of Motor Carrier Annual Report Form A, other than those which relate solely to the direct ownership and operation of highway equipment, and shall be filed in duplicate with the Interstate Commerce Commission, Washington, D.C., on or before November 1, 1957. Such persons shall also file similar reports annually, prepared in accordance with requirements for compiling Motor Carrier Annual Report Form A, as those requirements are now in effect or may in the future be modified, for each succeeding calendar year, or accounting year of thirteen 4-week periods, beginning with the year 1957, such annual reports to be filed in duplicate with the Commission on or before March 31 of the year following the one to which the report relates.

(b) Each company subject to this section is hereby required to file with this Commission, in addition to said Annual Report Form A, a supplemental consolidated report setting forth the complete financial condition of such company and its subsidiaries in the scope and form indicated in the instructions to the supplemental consolidated report for the year 1959 and each succeeding year thereafter. Such supplemental financial reports shall be attached to and considered an integral part of the Motor Carrier Annual Report Form A filed by each company.

[FR Doc.73-2487 Filed 2-7-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Chincoteague National Wildlife Refuge, Va.

The following special regulation is issued and is effective during the period January 1, 1973 through December 31, 1973.

§ 28.28 Special regulations; public access, use, and recreation; for individual wildlife refuge areas.

VIRGINIA

CHINCOTEAGUE NATIONAL WILDLIFE REFUGE

Entry and public use of the refuge is permitted as posted. Regulations promulgated by the National Park Service under Title 36 Code of Federal Regulations apply to the access road and the Tom's Cove Hook area.

The refuge, comprising approximately 9,400 acres, is delineated on a map available from the Refuge Manager, Chincoteague National Wildlife Refuge, Box 62, Chincoteague, Va. 23336 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

RICHARD E. GRIFFITH,
Regional Director,
Bureau of Sport Fisheries and Wildlife.

JANUARY 24, 1973.

[FR Doc.73-2418 Filed 2-7-73;8:45 am]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 319—FOREIGN QUARANTINE NOTICES

Avocado Seed; Termination of Quarantine

The avocado seed quarantine contained in 7 CFR 319.12 is hereby terminated on February 8, 1973.

When first promulgated on February 27, 1914, this quarantine was designed to prevent the introduction into the United States of the avocado weevil (*Heilipus lauri Boh.*) by forbidding the importation of avocado seeds into the United States from Mexico and the countries of Central America, where it was determined that such injurious insect, new to and not theretofore widely prevalent or distributed within or throughout the United States, existed. Later, the Nursery Stock, Plants, and Seeds Quarantine (7 CFR 319.37 et seq.) came into effect June 1, 1919, and years' experience with the Nursery Stock, Plants, and Seeds Quarantine 319.37 has so well proved its worth as a means of protection against injurious foreign insects and diseases, that the maintenance of a special avocado seed quarantine seems unnecessary.

Concurrently, § 319.37(b) is being amended, effective on the same date as this termination to add avocado seed to the list of items prohibited importation from Mexico and all countries in Central and South America because of the avocado weevil (*Heilipus lauri Boh.*), avocado seed. moth (*Stenoma catenifer Wals.*), and *Conotrachelus spp.*

Thereafter, avocado seed will be prohibited importation from Mexico, Central America, and South America under provisions of Quarantine 319.37. This document terminates a quarantine which is no longer deemed necessary because better protection against avocado seed pests from all countries will be afforded by Quarantine 319.37. It appears that public participation in this rule making procedure would not make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable and unnecessary and the revocation may be made effective less than 30 days after publication hereof in the FEDERAL REGISTER.

The provisions in 7 CFR 319.12 which are hereby terminated shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

(Secs. 5 and 7, 37 Stat. 316; 7 U.S.C. 159, 160; 37 FR 23464, 23477)

Effective date. The termination of the avocado seed quarantine (7 CFR 319.12) shall become effective on February 9, 1973.

Done at Washington, D.C., this 2nd day of February 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-2506 Filed 2-7-73;8:45 am]

PART 319—FOREIGN QUARANTINE NOTICES

Sweetpotatoes; Termination of Quarantine

The sweetpotato quarantine contained in 7 CFR 319.29 is hereby terminated on February 9, 1973. When first promulgated in 1918, this quarantine was designed to protect the United States from certain injurious insects of sweetpotato for which there were no effective treatments. In recent years through research, treatments have been developed which will eliminate insect pests of concern in shipments of sweetpotatoes. In addition, it has been determined that certain countries producing sweetpotatoes are free of injurious insects which are of quarantine significance to the United States.

Because of the prohibitory nature of said quarantine the Department of Agriculture is unable to approve the entry of sweetpotatoes into the United States under circumstances in which such importations would not involve a risk of spread of plant pests, e.g., importations from countries having pests which can be killed by approved treatments.

Upon termination of this quarantine the entry into the United States of edible sweetpotato products would be regulated under the provisions of the Fruits and Vegetables Quarantine 56 (7 CFR 319.56 et seq.), and the propagative entries would be regulated under the provisions of the Nursery Stock, Plants, and Seeds Quarantine 37 (7 CFR 319.37 et seq.). The provisions of these quarantines would appear to afford adequate protection against entry of destructive insects of sweetpotatoes as well as diseases, including viruses which could not be eliminated by treatment.

This action relieves restrictions and it does not appear that public participation in rule making procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable and unnecessary, and this action may be made effective less than 30 days after publication in the FEDERAL REGISTER.

The provisions in 7 CFR 319.29 which are hereby terminated shall be deemed to

continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

(Secs. 5 and 7, 37 Stat. 316; 7 U.S.C. 159, 160; 37 FR 28464, 28477)

The termination of the sweetpotato quarantine, 7 CFR 319.29, shall become effective on February 9, 1973.

Done at Washington, D.C., this 2d day of February 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-2505 Filed 2-7-73;8:45 am]

PART 319—FOREIGN QUARANTINE NOTICES

Nursery Stock, Plants, and Seeds; Avocado Seed

Pursuant to the authority contained in sections 7 and 9 of the Plant Quarantine Act (7 U.S.C. 160, 162), the Nursery Stock, Plants, and Seeds Quarantine, 7 CFR 319.37, is hereby amended to add avocado seed from Mexico and the countries of Central America and South America to the list of articles prohibited importation under the quarantine, because of the existence there of specified plant pests. The special Avocado Seed Quarantine contained in 7 CFR 319.12 which prohibited the importation of avocado seed from certain countries is terminated under an order published concurrently with this amendment.

Accordingly § 319.37 is hereby amended by inserting the following information alphabetically in the respective tabular columns in paragraph (b):

§ 319.37 Notice of quarantine.

* * * * *

(b) * * *

Plant material	Foreign country or countries from which prohibited	Injurious insect or plant disease determined as existing in the country or countries named and capable of being transported in the prohibited plant material
* * *	* * *	* * *
Persea spp seed.	Mexico and all countries in Central and South America.	Heilipus lauri Boh. (avocado weevil); Stenoma catenifer Wals. (avocado seed moth); Conotrachelus spp.
* * *	* * *	* * *

(Secs. 7, 9, 37 Stat. 317; 7 U.S.C. 160, 162; 37 FR 28464, 28477)

This action is necessary to prevent the introduction of such pests into the United States. It does not appear that public participation in rule making procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication hereof in the FEDERAL REGISTER.

Effective date. This amendment shall become effective on February 9, 1973.

Done at Washington, D.C. this 2d day of February 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-2507 Filed 2-7-73;8:45 am]

CHAPTER VIII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (SUGAR), DEPARTMENT OF AGRICULTURE

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

PART 857—SUGARCANE; PUERTO RICO

Proportionate Shares for Farms—1973-74 Crop

The following determination is issued pursuant to section 302 of the Sugar Act of 1948, as amended.

§ 857.22 Proportionate shares for the 1973-74 crop of sugarcane not required.

It is determined for the 1973-74 crop of sugarcane that, in the absence of proportionate shares, the production of sugar from such crop will not be greater than the quantity needed to enable the area to meet its quota for 1974, the calendar year during which the larger part of the sugar from such crop normally will be marketed, and provide a normal carryover inventory. Consequently, proportionate shares will not be in effect in Puerto Rico for the 1973-74 crop of sugarcane.

(Secs. 301, 302, 403, 61 Stat. 929, 930, as amended, 932; 7 U.S.C. 1131, 1132, 1153)

Statement of bases and considerations. Section 302 of the Sugar Act, as amended, provides, in part, that the Secretary shall determine for each crop year whether the production of sugar from any crop of sugarcane will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

In accordance with this provision of the Act, an informal public hearing was held in Washington, D.C., on December 20, 1972. Interested persons were invited to submit views and recommendations concerning the possible establishment of proportionate shares for the 1973-74 crop of sugarcane.

A representative of the Puerto Rico Land Administration recommended that proportionate shares not be established for the 1973-74 crop of sugarcane. He stated that production from the 1971-72 crop totaled just less than 300,000 tons of sugar, raw value, as compared to a marketing opportunity in calendar year 1972 of 995,000 tons, which resulted in a declared deficit of 704,000 tons for the year. He said that Puerto Rico will again sustain a substantial deficit in 1973, since sugar production from the 1972-73 crop is not expected to exceed 335,000 tons. The representative also stated that prospects for the 1973-74 crop indicate that sugar production will not be sufficient to press against the 1974 quota; and that there is no necessity, therefore, to establish proportionate shares for the 1973-74 crop of Puerto Rican sugarcane. No other interested persons offered testimony.

Accordingly, I hereby find and conclude that the foregoing determination will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

Effective date: February 8, 1973.

Signed at Washington, D.C., on February 2, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-2470; Filed 2-7-73;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERIVCE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 287]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period February 9-15, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.587 Navel Orange Regulation 287.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketnig Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges continues to be active this week and is showing further improvement over last week. Prices f.o.b. averaged $3.65 a carton on a reported sales volume of 1,012 carlots last week, compared with an average f.o.b. price of $3.58 per carton and sales of 1.024 carlots a week earlier. Track and rolling supplies at 520 cars were up 103 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 6, 1973.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period February 9, 1973, through February 15, 1973, are hereby fixed as follows:

(i) District 1: 891,000 cartons;
(ii) District 2: 209,000 cartons;
(iii) District 3: Unlimited.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 7, 1973.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73-2692 Filed 2-11-73;11:49 am]

Proposed Rule Making

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

ALLOCATIONS OF IMPORTS OF CRUDE OIL AND UNFINISHED OILS BASED ON EXPORTS OF PETROCHEMICALS

Notice of Proposed Rule Making

Section 9A of Oil Import Regulation 1 (Revision 5), as amended, providing for the allocation of imports of crude and unfinished oils into Districts I–IV and District V to persons operating petrochemical plants, based on the quantities of eligible petrochemicals exported, became effective beginning with the allocation period January 1, 1972, through December 31, 1972.

At the time of its publication in the FEDERAL REGISTER (37 FR 4259) it was stated, in effect, that, as experience was gained under the program, consideration would be given to modifications that would make the program more effective and facilitate its administration. It is believed that the program can be made more effective by making certain modifications that are derived from the experience gained.

There is an established practice among exporters whereby substantial volumes of exports are made by brokers and others and through exchanges. Presently, section 9A does not provide for allocations of crude oil for exports of eligible petrochemicals where title passes from the manufacturer prior to actual export; nor for exchanges of identical materials of another producer located more conveniently to the point of export and exporting a like material received through the exchange. This proposed rulemaking, recognizing such established practices as a normal part of the export business, provides for allocations for such transactions, but in each instance the producers of the actual petrochemical exported will receive the allocation only through certification from the actual exporter.

Often the hydrogen and carbon content of eligible petrochemicals is derived from mixtures of qualified inputs and of inputs which are not qualified. It is not economical to segregate such inputs or products for purposes of this program. The present regulation, under such conditions, limits the allocation based on such exports to that quantity of the eligible hydrogen and carbon content proportional to the quantity of qualified inputs as compared to the nonqualified inputs. This proposed rulemaking, recognizing the economics of the situation, adopts the assumption that the exported portion was derived from qualified inputs to the full extent of such qualified inputs and that the nonqualified inputs went into the domestically sold portion.

The present regulation provides that the applicant shall receive an allocation of barrels of crude oil equal to the quotient obtained by dividing the total weight of eligible carbon and hydrogen in the eligible petrochemical by 300. The proposed rule making adopts a factor of 250 rather than 300, recognizing compensation for waste in converting the hydrocarbon feed to eligible petrochemicals.

The present regulation requires the filing of an application for an allocation each quarter of an allocation period. This has been found to be both time consuming and unnecessarily disruptive. In the interest of increased efficiency in this respect, the proposed rulemaking increases the "base period" from 3 months to 6 months, changes the filing date from 45 to 60 days after the end of the base period, and provides that licenses shall expire 12 months after the respective base period. The proposed rulemaking continues the practice of basing allocations on exports of eligible petrochemicals made during a base period.

In addition, the list of eligible petrochemicals has been expanded. These petrochemicals added to the list are (1) those which are inadvertently omitted from the original program; (2) those which are produced by chemical reaction and then require mechanical processing to the form in which they are most commonly transported and used; and, (3) those which, even though in the form of final end use, are nevertheless involved in a chemical reaction in the final stage of manufacture. The added eligible petrochemicals are:

Trade classification Schedule B number	*Description*
266.2–266.3	Manmade fibers suitable for spinning, except glass.
554.2022–554.2026.	Detergents, synthetic organic bulk.
544.2032–554.2036.	Surface-active agents, except detergents, acid-type cleaners, and textile, and leather-finishing agents.
581.3230	Cellulose ester molding and extrusion compositions.
581.3242	Cellulose esters (except molding and extrusion compositions) in unfinished forms.
581.3260	Chemical derivatives of cellulose unplasticized.
599.7100	Artificial waxes.
599.7515–599.7530.	Additives for lubricating oils, fuel oils, and liquid gum inhibitors.
629.1	Rubber tires and tubes for vehicles and aircraft.
651.6–651.7	Yarn (including monofilm and strip), thread, tire cord, and tire cord fabric of noncellulosic and cellulosic manmade fibers.

Final action upon the proposed amendment is subject to the concurrence of the Director, Office of Emergency Preparedness.

Interested persons are invited to submit written comments on the proposed section 9A on or before March 12, 1973, to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240. Each person who submits comments is asked to provide fifteen (15) copies.

DELL V. PERRY,
Assistant Director,
Office of Oil and Gas.

Sec. 9A Allocation based on exports.

(a) For the purposes of this section: (1) "eligible petrochemicals" means the following materials produced in the person's facilities in Districts I–IV or District V and falling into the following trade classification of Schedule B of the Department of Commerce Statistical Classifications of Domestic and Foreign Commodities Exported from the United States.

Trade Classification Schedule B Number	*Description*
231.2	Synthetic rubber and rubber substitutes except compounded, semiprocessed, and manufactures; e.g., SBR type rubber, butyl rubber.
266.2–266.3	Manmade fibers suitable for spinning except glass; e.g., nylon staple, polyester staple.
	Chemical Elements and Compounds
512	Organic chemicals; e.g., ethylene glycol, acetic acid.
513.27	Carbon black.
521.4024	Ortho-Xylene.
521.4025	Para-Xylene.
521.4027	Mixed Xylenes.
554.2022–554.2026	Detergents, synthetic organic bulk; e.g., alkyl aryl sulfonate, sodium toluene sulfonated.
	Description
554.2032–554.2036.	Surface-active agents, except detergents, acid-type cleaners, and textile and leather-finishing agents.
581.1005–581.1055—581.2002–581.2058.	Plastic materials and artificial resins; e.g., polyamide, phenolic, polyethylene.
581.3230	Cellulose ester molding and extrusion compositions; e.g., cellulose acetate.

Trade Classification Schedule B Number	Description
581.3242	Cellulose esters (except molding and extrusion compositions) in unfinished forms; e.g., granules, powder.
581.3260	Chemical derivatives of cellulose unplasticized; e.g., cellulose acetate-butyrate (flake, powder, waste or scrap).
599.7100	Artificial waxes e.g., solidified polyethylene glycol, glyceryl tri-(12-hydroxystearate).
599.7505–599.7507.	Antiknock mixtures.
599.7515–599.7530.	Additives for lubricating oils, fuel oils, liquid gum inhibitors.
599.9960	Reagents for ore recovery.
621.0105	Carbon black masterbatch.
629.1	Rubber tires and tubes for vehicles and aircraft.
651.6–651.7	Yarn (including monofil and strip), thread, tire cord, and tire cord fabric of noncellulosic and cellulosic manmade fibers.

(2) "Broker" and "Export Agent" mean a person whose occupation includes the transaction of business relating to the exportation of goods.

(3) Each half of a particular allocation period (e.g., January through June) shall constitute a "base period."

(b) A person who holds an allocation of imports into Districts I–IV or into District V for a particular allocation period under section 9 of this regulation shall also be entitled to receive under this section 9A an allocation of imports of crude oil into Districts I–IV or into District V (as the case may be) based on his exports of eligible petrochemicals during the base period and subject to the provisions contained in paragraph (e) of this section.

(c) An application for an allocation under this section must be filed with the Director no later than 60 days after the last day of the base period to which the application relates. Amendments to applications resulting in upward adjustments of allocations under this section must be filed with the Director no later than the last day of the base period following the base period to which the allocation applies. An application shall be in such form as the Director may prescribe.

(d) Licenses issued under an allocation made pursuant to this section shall expire 12 months after the respective base period.

(e) (1) The Director shall determine the weight (in pounds) of eligible petrochemicals (i) which were produced in the person's facilities in Districts I–IV or in District V, and (ii) which were exported from the Customs territory of the United States during the base period whether by the person, a broker or an export agent or a foreign purchaser thereof in the form produced by and without value added by the person and without further processing. The person shall furnish such evidence as the Director may require to establish that the export was, in fact, made.

(2) The Director shall ascertain the hydrogen and carbon content (in pounds) of that part of the weight of the eligible petrochemicals determined pursuant to paragraph (e) (1) of this section, which was (i) produced by chemical reaction in the person's facilities and (ii) derived from crude oil or unfinished oils produced or manufactured in Districts I–IV or in District V or imported into Districts I–IV or District V pursuant to an allocation. The weight thus ascertained shall be divided by 250; and the applicant shall receive an allocation of barrels of imports of crude and unfinished oils equal to the resulting quotient. Where a person produced an eligible petrochemical from a combination of inputs which qualify under clause (ii) of this subparagraph (2) and inputs which do not so qualify, and a portion of such eligible petrochemical was exported, the hydrogen and carbon content of the exported portion shall be deemed to have been derived entirely from the qualified inputs to the full extent of such qualified inputs except that such hydrogen and carbon shall not be deemed to have been derived from a qualifying input from which the hydrogen and carbon could not actually have been derived.

(f) A shipment of eligible petrochemicals from Districts I–IV or from District V to a foreign country or to the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands constitutes an export for the purposes of this section. A shipment of eligible petrochemicals from Districts I–IV or from District V to Puerto Rico or to a foreign trade zone shall not constitute an export for the purposes of this section. If eligible petrochemicals are returned after having been exported, the total weight of such eligible petrochemicals so returned, whatever the form of the import, shall either be excluded or deducted as appropriate from the applicant's base in computing an allocation under paragraph (e) of this section.

(g) An allocation made pursuant to this section shall entitle a person to a license or licenses which will allow the importation of unfinished oils in an amount not exceeding, in the aggregate, 15 percent of the person's allocation. However, the Director shall permit a person holding such an allocation to import unfinished oils in an amount up to 100 percent of such person's allocation upon certification by him to the Director that such imported unfinished oils will not be exchanged, that such unfinished oils will be processed entirely in the person's petrochemical plants, and that more than 50 percent by weight of the yields from such unfinished oils will be converted into petrochemicals or that more than 75 percent by weight of recovered product output will consist of petrochemicals.

(h) No license issued under an allocation made pursuant to this section shall permit the importation of Canadian imports as defined in section 1A of Proclamation 3279.

(i) A person who imports crude oil or unfinished oils under an allocation made under this section may, except as provided in paragraph (g) of this section, exchange his imported crude oil either for domestic crude oil or for domestic unfinished oils or exchange his imported unfinished oils for domestic unfinished oils or for domestic crude oil. All such exchanges shall be governed by the provisions of paragraph (b) (2), (3), (5), and (6) of section 17 of this regulation.

(j) No allocation made pursuant to this section may be sold, assigned or otherwise transferred.

(k) This section 9A shall be effective for the allocation period January 1, 1973, through December 31, 1973, and succeeding allocation periods.

[FR Doc.73-1717 Filed 2-7-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1421]

DRY EDIBLE BEANS

Proposed Loan and Purchase Program for 1973 Crop

Notice is hereby given that the Secretary of Agriculture proposes to make determinations and issue regulations relative to a loan and purchase program for the 1973 crop of dry edible beans, including a loan level, program eligibility requirements, storage requirements and detailed operating provisions.

Statutory authority relating to such a program appears in sections 301, 303, 401, and 403 of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1447, 1449, 1421, and 1423), and sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c).

Section 301 of the Agricultural Act of 1949 authorizes the Secretary to make available through loans, purchases, or other operations support to producers for any nonbasic commodity for which support is not mandatory at a level not in excess of 90 per centum of the parity price for the commodity. Section 401 requires that, in determining the level of support, consideration be given to the supply of the commodity in relation to the demand therefor, the levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired through a support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand. Section 303 requires that, in determining the level of support, particular consideration shall be given to the levels at which competing agricultural commodities are being supported.

Commodity and producer eligibility requirements, storage requirements and detailed operating provisions necessary to carry out the program are also being reviewed for 1973. Provisions of this kind under current programs may be found in regulations governing loans, purchases and other operations for grain

and similarly handled commodities which appear in Title 7, Part 1421 of the Code of Federal Regulations.

Prior to making any of the foregoing determinations, consideration will be given to data, views, and recommendations which are submitted in writing to the Director, Oilseeds and Special Crops Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All submissions must, in order to be sure of consideration, be received by the Director not later than March 9, 1973.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during the regular business hours (8:15 a.m. to 4:45 p.m.) (7 CFR 1.27(b)).

Signed at Washington, D.C., on February 2, 1973.

GLENN A. WEIR,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-2471 Filed 2-7-73;8:45 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 7]

FLAMMABILITY STANDARD FOR MATTRESSES

Proposed Testing Procedure and Sampling Plan

Finding. Pursuant to section 4(a) of the Flammable Fabrics Act, as amended (sec. 3, 81 Stat. 569; 15 U.S.C. 1193) and § 7.5 of the Flammable Fabrics Act Procedures (33 FR 14642, Oct. 1, 1968), and upon the basis of petitions received and investigations or research conducted pursuant to section 14 of the Flammable Fabrics Act, as amended (sec. 10, 81 Stat. 573; 15 U.S.C. 1201), it is hereby found that amendments may be needed in the testing procedure and sampling plan of the Flammability Standard for Mattresses (DOC FF 4-72, May 31, 1972; 37 FR 11362, June 7, 1972). Such petitions are on file in the Central Reference and Records Inspection Facility of the Department of Commerce, Room 7043, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Based upon the information described above, there may be need to amend the provisions of the Flammability Standard for Mattresses (DOC FF 4-72) in the following areas in order to protect the public against the unreasonable occurrence of mattress fires leading to death or personal injury, or significant property damage:

a. There may be insufficient justification for the conditioning requirements of section .4(c) and the requirement for a test room in section .4(a)(1). Accordingly, it may be desirable to allow prototype mattress testing without an upper temperature limit and to allow production testing without conditioning in any draft free enclosure rather than a special test room.

b. There is a possibility that white, 100 percent combed cotton percale sheets required in section .4(b)(6) for use in the test may not be available in sufficient quantity or within reasonable price ranges.

c. The standard now allows a company with multiple facilities or a group of companies normally selling under the same name to conduct centralized prototype testing. It may be desirable to have a similar provision to allow a group of independent companies to pool their resources to carry out prototype qualification on a combined basis.

d. The definition of "mattress prototype" now set forth in section .1(h) may be so restrictive as to prohibit valid information determined as to one class of mattress being applied to another similar class of mattress without retesting.

e. In view of the specialized nature of the production testing required under the provisions of the standard, there may be instances where an individual manufacturer, despite his best efforts, cannot acquire access to either "in house" or independent testing facilities for production testing. It may, therefore, be desirable to authorize the Federal Trade Commission upon proof submitted by the manufacturer on a case-by-case basis to suspend temporarily production testing under such rules as it may prescribe. In the event of such a suspension, the manufacturer would still be obligated to produce a mattress which meets all other requirements of the standard.

Institution of proceedings. Pursuant to section 4(a) of the Flammable Fabrics Act, as amended (sec. 3, 81 Stat. 569; 15 U.S.C. 1193) and section 7.6(a) of the Flammable Fabrics Act Procedures (33 FR 14642, Oct. 1, 1968), notice is hereby given of the institution of proceedings for the development of appropriate amendments to the testing procedure and sampling plan of the Flammability Standard for Mattresses (DOC FF 4-72).

Participation in proceedings. All interested persons are invited to submit written comments or suggestions within 30 days after the date of publication of this notice in the FEDERAL REGISTER relative to (1) the above finding that the mentioned amendments may be needed; and (2) the terms or substance of such amendments that might be adopted in the event that a final finding is made by the Secretary of Commerce that such amendments to the standard are needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage. Written comments or suggestions should be submitted in at least four (4) copies to the Assistant Secretary for Science and Technology, Room 3862, U.S. Department of Commerce, Washington, D.C. 20230, and should include any data or other information pertinent to the subject.

Inspection of relevant documents. The written comments received pursuant to this notice will be available for public inspection at the Central Reference and Records Inspection Facility of the Department of Commerce, Room 7043, Main Commerce Building, 14th Street, between E Street and Constitution Avenue NW., Washington, D.C. 20230.

Issued: February 6, 1973.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

[FR Doc.73-2646 Filed 2-6-73;4:39 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 401]

[Reg. 1]

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Disclosure for Purposes of Medicare Administration

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the amendment to the regulation set forth in tentative form is proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendment to the regulation provides that the Social Security Administration may disclose information to the Department of Justice and the Treasury Department for purposes of administration of title XVIII of the Social Security Act.

Prior to the final adoption of the proposed amendment to the regulation, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before March 12, 1973.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, DC 20201.

The proposed amendment is to be issued under the authority contained in sections 205, 1102, 1106, and 1871, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, 79 Stat. 331; 42 U.S.C. 405, 1302, 1306, and 1395hh.

Dated: January 12, 1973.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

Regulation No. 1 of the Social Security Administration (20 CFR 401.1 et seq.) is further amended as set forth below.

Section 401.3 is amended by revising paragraph (d) to read as follows:

§ 401.3 Information which may be disclosed and to whom.

Disclosure of any such file, record, report, or other paper, or information, is hereby authorized in the following cases and for the following purposes:

* * * * *

(d) To any officer or employee of the Treasury Department, or of the Department of Justice, of the United States, lawfully charged with the administration of titles II, VIII, IX, or XVIII of the Social Security Act, the Federal Insurance Contributions Act, the Self-Employment Contributions Acts, or the Federal Unemployment Tax Act, or any Federal income tax law, for the purpose of such administration only.

* * * * *

[FR Doc.73-2502 Filed 2-7-73;8:45 am]

[20 CFR Part 404]

[Reg. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Old-Age, Disability, Dependents', and Survivors' Insurance Benefits, Period of Disability; Lump-Sum Death Payments

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.), that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. Under present regulations if the lump-sum death payment is not payable to the widow or widower of the deceased, or to a funeral home, it can only be paid to the person who paid the burial expenses of the deceased. The proposed amendments provide that where the body of the deceased is not available for burial and there is no widow or widower to receive the payment it may be paid to the person who paid for a memorial service, a memorial marker, or similar expenses in connection with the death. This change is in accord with an amendment to the Social Security Act and applies in the case of deaths which occur after 1970.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, DC 20201, on or before March 12, 1973.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, DC 20201.

The proposed amendments are to be issued under the authority contained in sections 202, 205, and 1102, 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; 42 U.S.C. 402, 405, and 1302.

Dated: January 12, 1973.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary of Health, Education, and Welfare.

1. Section 404.360 is amended by revising paragraph (a), by adding a new subparagraph (6) to paragraph (c), and by adding a new subparagraph (7) to paragraph (d), to read as follows:

§ 404.360 Lump-sum death payments; persons equitably entitled.

(a) (1) *Burial expenses incurred by or through a funeral home.* If any part of the lump-sum death payment remains unpaid after payment pursuant to § 404.358, such amount shall be paid to any person or persons equitably entitled thereto, to the extent and in the proportions that such person or persons paid the burial expenses of the insured individual incurred by, or through, a funeral home (or funeral homes) provided that:

(i) All of the burial expenses of the insured individual incurred by, or through, a funeral home (or funeral homes) have been paid, including payments, if any, made under § 404.358; and

(ii) All of the conditions in § 404.355 are met.

(2) *Expenses incurred in connection with a memorial service.* In the case of a death which occurred after December 31, 1970, if the body of the insured individual is not available for burial but expenses were incurred with respect to such individual in connection with a memorial service, a memorial marker, a site for the marker, or any other item of a kind for which expenses are customarily incurred in connection with a death and such expenses have been paid, the lump sum may be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such expenses.

* * * * *

(c) *"Person or persons equitably entitled."* The term "person or persons equitably entitled" includes, but is not limited to, the following:

* * * * *

(6) An organization, State, or other entity of the kind listed and under the conditions set forth in paragraph (c) (1)–(5) of this section paying expenses incurred in connection with a memorial service, a memorial marker, or any other item of a kind for which expenses are customarily incurred in connection with a death.

(d) *Person or persons not "equitably entitled."* The term "person or persons equitably entitled" does not include, among others, any of the following:

* * * * *

(7) A person, employer, or other entity described in, and subject to the conditions specified in paragraph (d) (1)–(6) of this section paying expenses incurred in connection with a memorial service, a memorial marker, or any other item of a kind for which expenses are customarily incurred in connection with a death.

* * * * *

2. Section 404.362 is revised to read as follows:

§ 404.362 Lump-sum death payments; individual paying burial or other expenses dies before collecting the lump sum.

In any case in which a person who is equitably entitled to a lump-sum death payment by virtue of having paid the burial expenses of the deceased insured individual or other expenses customarily incurred in connection with a death (see § 404.360 (a) and (b)), dies before collecting the lump sum, payment may be made to the estate of the equitably entitled person in the manner prescribed in § 404.361 except that, if the spouse of such deceased equitably entitled person files application for payment on behalf of such person's estate, consent of the other relatives to payment being made to such spouse as would ordinarily be required by § 404.361(b) need not be obtained from such other relatives.

3. Section 404.363 is amended by revising the part of paragraph (c) which precedes subparagraphs (1) through (5) and by revising paragraph (d). As revised, paragraphs (c) and (d) will read as follows:

§ 404.363 Lump-sum death payments; amount of payment.

* * * * *

(c) *Person or persons paying burial expenses incurred by or through a funeral home.* When payment of a lump sum is to be made to a person, or persons, who paid burial expenses incurred by, or through, a funeral home, or funeral homes (see § 404.360(a) (1)), the amount payable to each such person is an amount equal to whichever of the following is the least:

(1) The amount of such burial expenses paid by such person;

(2) Three times the primary insurance amount of the deceased individual;

(3) $255;

(4) The amount of the lump sum remaining, if any, after payment has been made to a funeral home, or funeral homes, in accordance with paragraph (b) of this section; or

(5) An amount which bears the same proportion to the lump sum payable (as determined under the provisions of the preceding subparagraphs of this paragraph) as the amount of the burial ex-

penses paid by such person bears to the total of the burial expenses incurred by, or through, a funeral home, or funeral homes.

(d) *Person or persons paying memorial service expenses or burial expenses (other than burial expenses incurred by or through a funeral home)*. When payment of the lump sum is to be made to a person who paid expenses in connection with a memorial service (where the body of the deceased is not available for burial—see § 404.360(a)(2)) or to a person who paid burial expenses other than those incurred by or through a funeral home or funeral homes (see § 404.360(b)), or where payment is to be made to more than one person who paid such memorial service expenses or burial expenses which are on the same level of priority (see §§ 404.360(a)(2) and 404.360(b)(1)-(3)), the amount payable to each such person shall be an amount equal to whichever of the following is the least:

(1) The amount of such memorial service or burial expenses paid by such person;

(2) Three times the primary insurance amount of the deceased individual;

(3) $255;

(4) The amount of the lump sum remaining unpaid (if any), after payment has been made to:

(i) A funeral home, or funeral homes, in accordance with paragraph (b) of this section; and

(ii) A person, or persons, who paid burial expenses incurred by, or through, a funeral home, or funeral homes, in accordance with paragraph (c) of this section; and

(iii) A person, or persons, who paid expenses in connection with a memorial service (where the body of the deceased is not available for burial) pursuant to § 404.360(a)(2); and

(iv) A person, or persons, who paid burial expenses, other than those incurred by, or through a funeral home, or funeral homes, which are on a higher level of priority (see § 404.360(b)(1)-(3)) than the expenses which constitute the basis for this payment of the lump sum; or

(5) An amount which bears the same proportion to the total lump sum payable (as determined under paragraph (d) (1) through (4) of this section) as the amount of the memorial service expenses or the burial service expenses (other than those incurred by, or through, a funeral home, or funeral homes) which such person paid (and which are the basis for this payment of the lump sum to such person) bears to the total of the burial expenses which are on the same level of priority as determined in accordance with §§ 404.360(a)(2) and 404.360(b)(1)-(3).

* * * * *

[FR Doc.73-2500 Filed 2-7-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-WA-31]

CHICAGO, ILL., TERMINAL CONTROL AREA

Proposed Alteration

Correction

In FR Doc. 73-270 appearing at page 890 in the issue for Friday, January 5, 1973, in the description of the TCA under "B. Boundaries" in the 10th line of paragraph (2) the reference to "10.5 north M" should read, "10.5 NM".

[14 CFR Part 71]

[Airspace Docket No. 72-SW-78]

VOR AIRWAYS

Proposed Alteration and Revocation

Correction

In FR Doc. 73-1601 appearing at page 2704 in the issue for Monday, January 29, 1973, in the second line of the proposed changes in 1. a., the reference to "Palacios 223° M" should read "Palacios 233° M".

[14 CFR Part 71]

[Airspace Docket No. 72-GL-79]

VOR FEDERAL AIRWAYS

Proposed Designation and Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter V-7, V-9, V-45, V-78, V-191, V-215, V-233, V-271, V-420, and V-430 in the Minneapolis and Chicago Air Route Traffic Control Centers areas and would designate a new airway between Marquette, Mich., and Schoolcraft County, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018. All communications received on or before March 12, 1973, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, DC 20591. An informal docket also will be available for examination at the Office of the Regional Air Traffic Division Chief.

The proposed amendment would:

1. Extend V-7 from Menominee, Mich., direct Marquette, Mich., including an east alternate via Escanaba, Mich.
2. Revoke the Menominee, Mich., additional control area between Menominee and Marquette, Mich.
3. Alter V-9 between Green Bay, Wis., and Houghton, Mich., to include a west alternate via Rhinelander, Wis.
4. Realian V-45 from Alpena, Mich., to Sault Ste. Marie, Mich., instead of Alpena, Mich., to Pellston, Mich.
5. Extend V-78 from Eau Claire, Wis., via Rhinelander, Wis., Iron Mountain, Mich., Escanaba, Mich., Schoolcraft County, Mich., Pellston, Mich., to Alpena, Mich.
6. Alter V-191 between Rhinelander, Wis., and Ironwood, Mich., to include an east alternate.
7. Extend V-215 from White Cloud, Mich., to Gaylord, Mich.
8. Alter V-233 between Mt. Pleasant, Mich., and Gaylord, Mich., to coincide with V-215.
9. Extend V-271 from Manistee, Mich., to Escanaba, Mich.
10. Designate a new airway from Marquette, Mich., to Schoolcraft County, Mich.
11. Change the numbered identifier of the airway from Traverse City, Mich., via Gaylord, Mich., to Alpena, Mich. The identifier would be changed from V-430 to V-420.
12. Alter V-233 between Mt. Pleasant, Mich., and Pellston, Mich., to include a west alternate via Traverse City, Mich. This would replace V-420 between Mt. Pleasant and Traverse City.

The Minneapolis Center has an operational requirement for additional airways in Michigan and Wisconsin. This area has extensive general aviation operations in the summer months. We believe these additional airways will provide a more efficient flow of traffic in this area by establishing routes to bypass the terminal areas where extensive holding delays are incurred.

Also, the deletion of V-430 between Traverse City and Alpena would avoid the present gap in this airway which ends at Escanaba, Mich., and starts again at Traverse City.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on February 2, 1973.

CHARLES H. NEWPOL,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2400 Filed 2-7-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-WA-31]

CHICAGO, ILL., TERMINAL CONTROL AREA

Proposed Alteration; Supplemental

On January 5, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 890) proposing alterations to the Chicago, Ill., Group I Terminal Control Area (TCA). The deadline for public comment on the proposal was set for February 5, 1973.

Subsequent to publication of the proposal, problems in distribution of the notice arose which require an extension of the comment period.

In consideration of the foregoing, the comment period for the proposed alteration of the Chicago TCA is extended to February 26, 1973. All communications received by that date wil be considered before action is taken on the proposal.

This action is taken under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C. on February 2, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2401 Filed 2-7-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-GL-80]

VOR FEDERAL AIRWAY

Proposed Alteration and Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate an east alternate to VOR Federal airway No. 67, between Rochester, Minn., and Waterloo, Iowa, realign VOR Federal airway No. 67, between Burlington, Iowa, and Capital, Ill., and designate a north alternate to VOR Federal airway No. 120, between Mason City, Iowa, and Waterloo, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018. All communications received on or before March 12, 1973, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The airspace action proposed in this docket would:

1. Designate a standard east alternate to V-67 from Rochester, Minn., to Waterloo, Iowa.
2. Realign V-67 from Burlington, Iowa, direct Capital, Ill.
3. Designate a standard north alternate to V-120 from Mason City, Iowa, to Waterloo.

The proposed alternate airways to V-67 and V-120 are in an area of nonradar coverage and their designation would provide greater flexibility in the control of air traffic in this nonradar area. The revocation of Restricted Area R-3301, effective February 1, 1973, published in FEDERAL REGISTER 37 FR 25022, will permit direct alignment of V-67 between Burlington, Iowa and Capital, Ill.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on February 2, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-2399 Filed 2-7-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules, that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 73-45]

FISH

Tariff Rate Quota for Calendar Year 1973

FEBRUARY 2, 1973.

In accordance with item 110.50 of part 3, schedule 1, Tariff Schedules of the United States, it has been ascertained that the average aggregate apparent annual consumption in the United States of fish, fresh, chilled, or frozen, fillets, steaks, and sticks, of cod, cusk, haddock, hake, pollock, and rosefish, in the 3 years preceding 1973, calculated in the manner provided for in headnote 1, part 3A, schedule 1, was 227,502,689 pounds. The quantity of fish that may be imported for consumption during the calendar year 1973 at the reduced rate of duty under item 110.50 is, therefore, 34,125,403 pounds.

[SEAL] R. N. MARRA,
Director, Appraisement and Collections Division.

[FR Doc.73-2519 Filed 2-7-73;8:45 am]

Bureau of the Mint

CONSTRUCTION OF NEW U.S. MINT, DENVER, COLORADO

Notice of Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of the Mint in the Department of the Treasury has prepared a Final Environmental Impact Statement for the location and, in general terms, the construction of a new U.S. Mint at Denver, Colo. The Statement was filed with the Council on Environmental Quality on February 5, 1973.

The proposed Mint would be located on some 30 acres in the city of Denver bordered by the official Platte River alignment on the east and Highway I-25 (Valley Highway) on the west.

The Mint is being planned for a production capacity of 7.7 billion domestic coins per year and 35 million proof coins and medals per year. It would be designed to provide space for expansion of critical operations and to make possible reasonable expandability of the facility to accommodate increased production requirements as they develop in future years. Although detailed design of the facilities has not yet been started, it has been determined that building space of approximately 700,000 square feet would be needed. The structures would reflect the importance of the governmental function to be performed.

Copies of the Statement are available for inspection during regular working hours at the office of the

Facilities Project Manager, Bureau of the Mint, Denver Mint, 320 West Colfax Avenue, Denver, CO.

and at the

Office of the Director, Bureau of the Mint, Room 2064, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, DC 20220.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

It is anticipated that a decision on the location of the Mint will be made shortly after the expiration of 30 days from the date of this notice.

[SEAL] WARREN F. BRECHT,
Assistant Secretary of the Treasury.

[FR Doc.73-2442 Filed 2-7-73;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Establishment, Organization and Functions

In accordance with the provisions of Public Law 92-463 Federal Advisory Committee Act, notice is hereby given that the DoD Wage Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. The office of Management and Budget has also reviewed the justification for this Advisory Committee and concurs with its establishment.

The charter for the DoD Wage Committee is as follows:

Designation. The Committee is the Department of Defense Wage Committee.

Objectives and scope of activity. The Committee makes recommendations regarding wage surveys and wage schedules for blue collar employees to the Department of Defense Wage Fixing Authority to discharge the responsibilities assigned by the Civil Service Commission in Federal Personnel Manual Supplement 532-1, "Federal Wage System." The Department of Defense has "lead agency" responsibility for setting wage rates in 115 of the 138 wage areas established under the Federal Wage System.

Time necessary to carry out purpose. Continuing.

Official to whom committee reports. The Committee will be responsible to the Assistant Secretary of Defense (Manpower and Reserve Affairs) and will operate in accordance with DoD Directive 5120.39, "Department of Defense Wage Fixing Authority," dated June 5, 1968.[1]

Membership. The Committee consists of five members:

Chairman: The Deputy Assistant Secretary of Defense (Civilian Personnel Policy) or an alternate designated by the Assistant Secretary of Defense (Manpower and Reserve Affairs). Any designated alternate will also be a full-time, salaried Government Officer or employee. The Chairman or his alternate will have authority to adjourn any meeting of the Committee which is not considered to be in the public interest.

Two members: Designated by the Military Departments or Defense Agencies having the largest number of wage employees covered by the wage schedule under consideration as determined by the Chairman.

Two members: Designated by the Head of each of the two labor organizations having the largest number of wage employees covered by exclusive recognition within the Department of Defense. The two organizations currently qualifying under this requirement are (1) the Metal Trades Department, AFL-CIO, and (2) the American Federation of Government Employees.

Agency which provides support. The Department of the Army through the operation of the Department of Defense Wage Fixing Authority Technical Staff.

Operation and description of duties for which Committee is responsible. The Committee will operate in accordance with the provisions of Public Law 92-463, E.O. 11686 and implementing OMB and DoD Regulations for Federal Advisory Committees. For wage areas referred to in "Objectives and scope of activity," above, upon completion of a local wage survey, the DoD Wage Committee will consider the survey data, the local survey activities report and recommendations, the statistical analysis and proposed pay schedules derived therefrom, as well as any other data or recommendations pertinent to the survey and recommend wage schedules to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

Estimated annual operating costs. An aggregate of one-sixth of a man-year representing salary apportionments of the Federal employee members of the Committee.

Estimated number and frequency of meetings. One each week.

Committee's termination date. The Committee will terminate 2 years from the date this charter is filed or when its mission is completed whichever is sooner, or unless prior approval for its continuation is obtained.

Date charter filed:

MAURICE W. ROCHE,
Director, Correspondence and Directives Division OASD (Comptroller).

[FR Doc.73-2408 Filed 2-7-73;8:45 am]

[1] Filed as part of original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attn.: Code 300.

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[Docket No. 73-4]

MALLINCKRODT CHEMICAL WORKS

Manufacture of Oxycodone; Notice of Hearing

On November 11, 1972, a Notice of Application for registration for the manufacture of oxycodone by Mallinckrodt

Chemical Works, St. Louis, Mo., was published in the FEDERAL REGISTER (37 FR 24050). In response to this notice Endo Laboratories, Inc., 1000 Stewart Avenue, Garden City, NY, informed the Bureau that they objected to the proposed application and requested that a hearing be held pursuant to 21 CFR 301.43.

Endo Laboratories, Inc. objected to the granting of such registration stating that such application was not in the public interest; that there was an adequate uninterrupted supply of oxycodone in the United States sufficient to meet legitimate medical, scientific research, and/or industrial purposes; that oxycodone dosage forms are manufactured and sold under adequately competitive conditions; and an additional manufacturer could serve no useful purpose and would increase the possibility of diversion of oxycodone or oxycodone products.

Endo Laboratories, Inc. is an "interested party" because it is registered with the Bureau as a manufacturer of bulk oxycodone. Because Endo Laboratories, Inc. has standing to request a hearing, and because Endo has raised significant issues regarding the propriety of registering an additional manufacturer of oxycodone, the Director has determined to grant its request for a hearing.

The Director of the Bureau of Narcotics and Dangerous Drugs, pursuant to the authority vested in the Attorney General by section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823) and delegated to the Director, Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28, Code of Federal Regulations hereby orders that a public hearing on the application will be held, commencing at 10 a.m. on March 6, 1973, in Room 1211, Bureau of Narcotics and Dangerous Drugs, 1405 Eye Street, NW., Washington, DC 20537.

Dated: February 2, 1973.

ANDREW C. TARTAGLINO,
Acting Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-2512 Filed 2-7-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEF, DIVISION OF ADMINISTRATION

Delegation of Authority Regarding Contracts and Leases

JANUARY 26, 1973.

A. Pursuant to redelegation of authority contained in Bureau Manual 1510.03C and the State Director's redelegation order of February 1, 1972, the Chief, Division of Administration, Administrative Officer, Craig District is authorized:

1. To enter into contracts with established sources for supplies and services, excluding capitalized and major noncapitalized equipment, regardless of amount and,

2. To enter into contracts on the open market for supplies and materials, excluding capitalized and major noncapitalized equipment, not to exceed $2,500 per transaction, provided the requirement is not available from the established sources, and,

3. To enter into negotiated contracts without advertising pursuant to section 302(c)(3) of the FPAS Act, of 1949, as amended, for rental of equipment and aircraft covered by offer agreements necessary for the purpose of emergency fire suppression, and,

4. To enter into contracts for construction and land treatment not to exceed $2,000 per transaction.

B. This authority may not be further redelegated.

MARVIN W. PEARSON,
District Manager.

[FR Doc.73-2417 Filed 2-7-73;8:45 am]

[N-7263]

NEVADA

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 30, 1973.

The Corps of Engineers on behalf of the Department of the Air Force has filed the above application for withdrawal of the lands described below, from all forms of appropriation under the public land laws, but not the mining and mineral leasing laws.

The applicant wishes to impose restrictions on future users or owners of the lands to prevent exposure to operational incompatibilities and safety hazards during flight landings and takeoffs. Uses to be restricted would be residential and institutional occupancies, release of substances into the air which would impair visibility or otherwise interfere with operation of aircraft, i.e., steam, dust, smoke; light emissions, either direct or reflective, which would interfere with or impair pilot vision; electrical emissions that would interfere with U.S. Air Force communication systems or navigational equipment; dumping of garbage, maintenance of feeding stations or any use attractive to birds or waterfowl; any object or extension of said land which would extend to a height of 150 feet above the runway elevation and/or within the approved-departure surface to a runway. The U.S. Air Force would reserve the right to overfly said land and subject it to noise emanating from aircraft in flight, whether or not directly over said land or operating on ground at Nellis Air Force Base or from engines operating on test stands at Nellis Air Force Base.

Until March 12, 1973, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Room 3008, Federal Building, 300 Booth Street, Reno, NV 89502.

The Department's regulations (43 CFR 2351.4(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

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.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

MOUNT DIABLO MERIDIAN

T. 19 S., R. 62 E.,
Sec. 23, S½SE¼, NE¼SE¼;
Sec. 24, S½SW¼, NW¼SW¼;
Sec. 25, S½NE¼, NW¼NE¼.
T. 20 S., R. 62 E.,
Sec. 1, S½NW¼, NW¼SW¼.

Aggregating 480 acres.

WILLIAM J. MALENCIK,
Chief,
Division of Technical Services.

[FR Doc.73-2416 Filed 2-7-73;8:45 am]

[OR 7547]

OREGON

Opening of Land Formerly in Project No. 1921

FEBRUARY 1, 1973.

1. In an order issued July 18, 1972, the Federal Power Commission vacated Project No. 1921 in its entirety, on the following described land:

WILLAMETTE MERIDIAN, OREGON

All portions of the following section lying within 10 feet of the centerline of the ditch, pipeline, powerhouse, and transmission line locations as shown on a map designated "Exhibit K" and entitled "Power Project of Roy W. Temple, Cascade Summit, Oreg.," and filed in the office of the Federal Power Commission on August 21, 1944:

T. 23 S., R. 6 E.,
Sec. 17, unsurveyed.
Approximately 0.91 acre.

2. The land lies within the Deschutes National Forest, south of Odell Lake and located along Alohe Creek, a small tributary of Odell Lake in the upper Deschutes River Basin.

3. The State of Oregon has waived the right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended.

4. Beginning at 10 a.m. on March 9, 1973, the national forest land shall be open to such form of disposition as may by law be made of such land.

5. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Post Office Box 2965 (729 Northeast Oregon Street), Portland, OR 97208.

VIRGIL O. SEISER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.73-2420 Filed 2-7-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 1]

PRICE SUPPORT PROGRAMS

Interest Rate for 1964 and Subsequent Crops

The revised announcement by Commodity Credit Corporation, published in 35 FR 3827, of the rate of interest applicable to price support programs on 1964 and subsequent crops or production is hereby amended to increase the rate of interest applicable to price support loans on 1973 and subsequent crops or production and on prior crop year loans extended on or after January 1, 1973.

Paragraph 1 is amended to read as follows:

1. Loans made or extended on barley, corn, dry edible beans, flaxseed, grain sorghums, honey, oats, farm-stored peanuts, rice, rye, soybeans, tung oil, and wheat, and Form A loans on cotton shall bear interest as follows:

a. For loans made, or extended prior to January 1, 1973, on 1969 and prior crops at the rate of 30 cents per $100 (fractions disregarded) for each calendar month or fraction thereof that the loan is outstanding, excluding the calendar month of repayment.

b. For loans made, or extended prior to January 1, 1973, on 1970, 1971, and 1972 crops at the rate of 30 cents for each unit of $100 and interest on each unit of $10 of any amount under $100 (rounded to the nearest $10 increment) at one-tenth of such rate for each calendar month or fraction thereof that the loan is outstanding, excluding the calendar month of repayment if the principal amount of the loan has been outstanding during all or any part of two or more calendar months.

c. For 1972 and prior crop year loans extended on or after January 1, 1973, at the per annum rate of 5.5 percent from the date of such extension.

d. For 1973 and subsequent crops, loans shall bear interest at the per annum rate of 5.5 percent from the date of disbursement.

Paragraph 2 is amended to read as follows:

2. All other commodity loans shall bear interest as follows:

a. For loans made, or extended prior to January 1, 1973, on 1972 and prior crops at the per annum rate of 3.5 percent from the date of disbursement.

b. For 1972 and prior crop year loans extended on or after January 1, 1973, at the per annum rate of 5.5 percent from the date of such extension.

c. For 1973 and subsequent crops, loans shall bear interest at the per annum rate of 5.5 percent from the date of disbursement.

Signed at Washington, D.C., on February 1, 1973.

GLENN A. WEIR,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-2503 Filed 2-7-73;8:45 am]

Forest Service

COOPERATIVE 1973 SPRUCE BUDWORM SUPPRESSION PROJECT IN MAINE

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Cooperative 1973 Spruce Budworm Suppression Project in Maine USDA-FS-DES (Adm) 73-44.

The environmental statement concerns a proposal to treat approximately 500,000 acres of State and private woodlands in northern Maine with either Zectran or Fenitrothion.

This draft environmental statement was filed with CEQ on January 29, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Building, Room 3230, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

USDA, Forest Service, 6816 Market Street, Room 409, Upper Darby, PA 19082.

A limited number of single copies are available upon request to John R. McGuire, Chief, U.S. Forest Service, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to John R. McGuire, Chief, U.S. Forest Service, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20250. Comments must be received by March 2, 1973, in order to be considered in the preparation of the final environmental statement.

GENE S. BERGOFFEN,
Acting Deputy Chief, Forest Service.

FEBRUARY 5, 1973.

[FR Doc.73-2504 Filed 2-7-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

OVER-THE-COUNTER LAXATIVE, ANTIDIARRHEAL, EMETIC AND ANTIEMETIC DRUG PRODUCTS

Safety and Efficacy Review; Request for Data and Information

FEBRUARY 1, 1973.

The FDA is undertaking a review of all over-the-counter (OTC) drug products for human use currently marketed in the United States, to determine that these OTC products are safe and effective for their labeled indications. This review will utilize expert panels working with FDA personnel.

A notice outlining procedures for this review was published in the FEDERAL REGISTER of May 11, 1972 (37 FR 9464).

To facilitate this review and a determination as to whether an OTC drug for human use is generally recognized as safe and effective and not misbranded under its recommended conditions of use, and to provide all interested persons an opportunity to present for the consideration of the reviewing experts the best data and information available to support the stated claims for all dosage forms of laxative, antidiarrheal, emetic and antiemetic drug products, the administration invites submission of data, published and unpublished, and other information pertinent to all active ingredients utilized in such preparations.

FDA is aware that the following active ingredients are used in such products and has conducted a literature search on each of them:

A. Laxative drug entities in oral and rectal dosage form:

Barley Malt Extract.	Glycerin.
Bile Salts.	Magnesium Sulfate.
Bisacodyl.	Milk of Magnesia.
Calomel.	Pancreatin.
Casanthranol.	Phenolphthalein.
Cascara.	Psyllium Husk.
Castor Oil.	Senna (Sennosides A or B).
Danthron.	Sodium Bicarbonate.
Dioctyl Sodium (or Potassium or Calcium) Sulfosuccinates.	Sodium Carboxymethylcellulose.
	Sodium Phosphate.

B. Antidiarrheal drug entities:

Aluminum Hydroxide.	Lactobacillus Acidophilus.
Atropine Sulfate.	Pectin.
Bismuth Subsalicylate.	Powdered Opium Alkaloids.
Kaolin.	Zinc Phenolsulfonate.

C. Emetic drug entities:

Antimony Potassium Tartrate.
Cupric Sulfate.
Ipecac (Syrup).
Mustard Black (brown mustard, allyl isothiocyanate).
Zinc Sulfate.

D. Antiemetic drug entities:

Dimenhydrinate.
Meclizine Hydrochloride.

FDA's literature search covered the United States of America literature and other leading English language literature published since 1950 from the following sources:

Medlars (NLM and SUNY).
FDA Clinical Experience Abstracts.
Quarterly Cumulative Index Medicus.
Current List of Medical Literature.
Index Medicus.
JAMA Subject Index.
DeHaen Drugs in Use.
RINGDOC.
VETDOC.
International Pharmaceutical Abstracts.
Excerpta Medica.
Abstracts of World Medicine.
Biological Abstracts.
Chemical Abstracts.

The bibliography of the literature search is available to interested persons.

Interested persons are also invited to submit data on any other active ingredients for laxative, antidiarrheal, emetic and antiemetic drug products.

To be considered, eight copies of the data and/or views must be submitted, preferably bound, indexed, and on standard size paper (approximately 8½ by 11 inches). All submissions must be in the format described below:

OTC DRUG REVIEW INFORMATION

I. Label(s) and all labeling (preferably mounted and filed with the other data—facsimile labeling is acceptable in lieu of actual container labeling).

II. A statement setting forth the quantities of active ingredients of the drug.

III. Animal safety data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

C. Finished drug product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

IV. Human safety data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.

5. Pertinent medical and scientific literature.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished drug product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of the finished product.

5. Pertinent medical and scientific literature.

V. Efficacy data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination on the efficacy of each individual active component.

5. Pertinent medical and scientific literature.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination on the efficacy of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished drug product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination on the efficacy of the finished drug product.

5. Pertinent medical and scientific literature.

VI. A summary of the data and views setting forth the medical rationale and purpose (or lack thereof) for the drug and its ingredients and the scientific basis (or lack thereof) for the conclusion that the drug and its ingredients have been proven safe and effective for the intended use. If there is an absence of controlled studies in the material submitted, an explanation as to why such studies are not considered necessary must be included.

VII. If the submission is by a manufacturer, a statement signed by the person responsible for such submission, that to the best of his knowledge it includes unfavorable information, as well as any favorable information, known to him pertinent to an evaluation of the safety, effectiveness, and labeling of such a product. Thus, if any type of scientific data is submitted, a balanced submission of favorable and unfavorable data must be submitted. The same would be true of any other pertinent data or information submitted, such as consumer surveys or marketing results.

In order to avoid duplication, interested persons should not in their submissions include published literature listed in the FDA literature search. An abstract of all such literature will be provided to the panel. Upon request, the panel will be provided with the complete article. Interested persons may, of course, refer to such literature in their submissions by citation.

Submissions or requests for copies of the bibliography of the FDA literature search should be forwarded to:

Food and Drug Administration, Bureau of Drugs, OTC Drug Products Evaluation Staff (BD-109), 5600 Fishers Lane, Rockville, MD 20852.

Submission of data must be on or before April 9, 1973 (Federal Food, Drug, and Cosmetic Act, section 701; 21 U.S.C. 371).

Dated: February 1, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-2410 Filed 2-7-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner (Federal Housing Administration)

[Docket No. N-73-129]

CARPET STANDARDS AND CARPET CERTIFICATION PROGRAM

Extension of Time To Comment on Proposed Revision of Standards and Proposed Adoption of Program

On December 12, 1972, at 37 FR 26457, the Department of Housing and Urban Development published a notice that it proposes to revise its standards for carpet and to adopt a carpet certification program. The notice invited the public to comment on both the proposed standards and the proposed program. The period for comment expired on January 15, 1973. The Department has been advised that numerous persons still desire to submit comments on the proposal. The Department has decided, therefore, to extend the period for comments until February 28, 1973.

Copies of the proposed standards and the proposed program are available for public inspection in the Office of Technical and Credit Standards, Architecture and Engineering Division, Room 5224, and the Office of General Counsel, Rules Docket Clerk, Room 10256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Copies are also available in each HUD regional area and insuring office. Comments should be filed in triplicate, using the above docket number and title, with the Rules Docket Clerk at the address stated above. All relevant material received on or before February 28, 1973, will be considered. Copies of comments will be available for examination by interested persons during business hours, both before and after the closing, at the Office of the Rules Docket Clerk.

Issued at Washington, D.C., February 2, 1973.

JOHN L. GANLEY,
Deputy Assistant Secretary for Housing Production and Mortgage Credit.

[FR Doc.73-2445 Filed 2-7-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

United States Coast Guard

[CGD 73 17 N]

THE GREAT LAKES PILOTAGE ADVISORY COMMITTEE

Notice of Open Meeting

This is to give notice pursuant to Public Law 92-463, sec. 10(a), approved October 6, 1972, that the Great Lakes Pilotage Advisory Committee will conduct an open meeting on February 26, 1973, in Conference Room 8332, Nassif Building, 400 Seventh Street SW., Washington, DC, beginning at 10 a.m.

Members of this Advisory Committee are:

(1) Captain Ernest A. Clothier, president, American Pilots Association.
(2) Dr. Eric Schenker, professor of economics and associate director center for Great Lakes studies.
(3) Mr. Richard L. Schultz, executive director of the Cleveland-Cuyahoga County Port Authority.

The summarized agenda for the February 26, 1973, meeting consists of:

(1) Committee administrative matters.
(2) Current pilotage operational matters.
(3) Great Lakes pilotage draft staff report.
(4) Next season's pilotage operating matters.

The Great Lakes Pilotage Advisory Committee was established by the Great Lakes Pilotage Act of 1960 (Public Law 86-555) to provide advice and consultation with respect to proposed pilotage regulations and policies.

The public may file statements with the Committee and oral statements may be presented before the Committee provided advance approval has been obtained.

Further information may be obtained by writing Chief, Ports and Waterways Planning Staff, Office of Marine Environment and Systems, U.S. Coast Guard, Washington, D.C. 20590, or by calling 202—426-2274.

Dated: February 2, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc.73-2475 Filed 2-7-73;8:45 am]

ATOMIC ENERGY COMMISSION

ATOMIC ENERGY LABOR-MANAGEMENT ADVISORY COMMITTEE

Notice of Meeting

The Atomic Energy Labor-Management Advisory Committee will hold an open meeting on February 22, 1973, at the Holiday Inn, 2051 Le Jeune Road, Coral Gables, FL 33134. The meeting will begin at 9:30 a.m., and end at approximately 12 noon.

The following agenda items are scheduled for discussion:

1. Current status of the Occupational Safety and Health Act and its relationship (a) to Government-owned plants and facilities, and (b) to licensee plants and facilities.
2. Current status of the nuclear power programs.
3. Discussion of recordkeeping function.

Further information may be obtained from Mr. H. T. Herrick, Director, Division of Labor Relations, U.S. Atomic Energy Commission, Washington, D.C., 20545, 301—973-5083.

JOHN V. VINCIGUERRA,
Assistant General Manager for Administration.

[FR Doc.73-2444 Filed 2-7-73;8:45 am]

GENERAL ADVISORY COMMITTEE

Notice of Meeting

FEBRUARY 2, 1973.

The General Advisory Committee will hold a closed meeting on February 13-15, 1973, at Richland, Wash.

The agenda item tentatively scheduled for consideration is: Atomic Energy Commission programs at its Hanford works.

JOHN V. VINCIGUERRA,
Advisory Committee Management Officer.

[FR Doc.73-2443 Filed 2-7-73;8:45 am]

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK AND NIAGARA MOHAWK POWER CORP.

Notice and Order for Prehearing Conference

Before the Atomic Safety and Licensing Board, in the matter of Power Authority of the State of New York and Niagara Mohawk Power Corp. (James A. Fitzpatrick Nuclear Power Plant, Unit No. 1), Docket No. 50-333.

Notice is hereby given that, pursuant to the Atomic Energy Commission's (the Commission) "Notice of Hearing Pursuant to 10 CFR Part 50, Appendix D, Section B; Notice of Consideration of Issuance of Facility Operating License and Opportunity for Hearing," published October 3, 1972, in the FEDERAL REGISTER, 37 FR 20740, and in accordance with § 2.751a of the Commission's rules of practice, 10 CFR Part 2, a special prehearing conference will be held in the above-captioned proceeding on March 2, 1973, at 10 a.m., local time, in the Legislative Chambers, County Building, 46 East Bridge Street, Oswego, NY 13126.

This special prehearing conference will be held before the Atomic Safety and Licensing Board (the Board) which is composed of Dr. Kenneth A. McCollom, Dr. Ernest O. Salo, and Mr. Daniel M. Head, chairman, with Dr. Thomas H. Pigford the technically qualified alternate and Mr. John H. Brebbia the alternate chairman.

This special prehearing conference will deal with the following:

1. Identification of the key issues;
2. Any steps necessary for further identification of the issues;
3. Outstanding petitions for intervention;
4. All pending motions;
5. The need for discovery, and the time required therefor;
6. Establishment of a schedule for further action; and
7. Such other matters as may aid in the orderly disposition of the proceeding.

In addition, the Board will expect to be advised of the impact of the Federal Water Pollution Control Act Amendments of 1972 on the conduct and disposition of this proceeding. As part of this discussion, the Board will require information on all applicable State and Federal water quality standards and effluent limitations, and on the status of the State certification required by section 401(a) of the Federal Water Pollution Control Act Amendments of 1972. The parties and petitioners for intervention should also be prepared to discuss the effect on this proceeding of the Memorandum of Understanding between the Atomic Energy Commission and the Environmental Protection Agency regarding implementation of section 511(c) of the Federal Water Pollution Control Act Amendments of 1972, including appendix A thereto, which is the AEC Interim Policy Statement on implementation of section 511.

Members of the public are invited to attend this prehearing conference as well as the evidentiary hearing to be held at a later date to be fixed by the Board. Members of the public wishing to make limited appearances may identify themselves at this prehearing conference but oral or written statements to be presented by limited appearance will not be received at this conference. The Board will receive such statements at the aforementioned evidentiary hearing.

The attorneys for the respective parties and any petitioners for intervention are directed to confer in advance of the special prehearing conference, in such manner as they deem appropriate, and report to the Board at said conference on any stipulations regarding matters in controversy, and on any other mutually agreeable procedures to expedite this proceeding.

By order of the Atomic Safety and Licensing Board.

Dated this 1st day of February 1973 at Washington, D.C.

DANIEL M. HEAD,
Chairman.

[FR Doc.73-2415 Filed 2-7-73;8:45 am]

[Dockets Nos. 50-361, 50-362]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS & ELECTRIC CO.

Notice and Order for Further Evidentiary Hearing

Atomic Safety and Licensing Board. In the matter of Southern California Edison Co. and San Diego Gas & Electric Co. (San Onofre Nuclear Generating Station, Units 2 and 3), Dockets Nos. 50-361 and 50-362.

Please take notice, that a further evidentiary hearing will be held in this proceeding commencing on Tuesday, March

13, 1973, at 2 p.m., in the auditorium of the Community Clubhouse, 100 North Seville Calle, San Clemente, CA 92672. This further evidentiary hearing will be for the principal purpose of receiving evidence from the parties to this proceeding on the issue of whether, assuming the Regulatory Staff's geologic model, 0.67 g. is a reasonably conservative design basis earthquake.

By order of the Atomic Safety and Licensing Board.

MICHAEL L. GLASER,
Chairman.

JANUARY 30, 1973.

[FR Doc.73-2414 Filed 2-7-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24762; Order 73-2-16]

ALLEGHENY AIRLINES, INC.

Order To Show Cause Regarding Deletion of Lawrenceville/Vincennes

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of February 1973.

By application in Docket 24762, Allegheny Airlines, Inc (Allegheny) has requested amendment of its certificate of public convenience and necessity for Route 97 so as to delete Lawrenceville, Ill./Vincennes, Ind. Simultaneously, Allegheny filed for the issuance of a show cause order and extension of temporary suspension pendente lite.[1]

No answers were filed in response to Allegheny.

Upon consideration of Allegheny's request and all the relevant facts, we have decided to issue an order to show cause, proposing to grant the requested deletion.

We tentatively find and conclude that the public convenience and necessity require the amendment of Allegheny's certificate for Route 97 so as to delete Lawrenceville, Ill./Vincennes, Ind., therefrom.[2] In support of our ultimate conclusion, we tentatively find and conclude as follows: Despite strong promotional efforts by Allegheny from October 1968 through September 1969 traffic sufficient to sustain economic service failed to develop[3] and service by Allegheny to Lawrenceville/Vincennes is not likely to be economically sound.

No factors are known which would significantly increase the demand over that of the promotional period. The carrier estimates that a reinstitution of service in 1973 would generate about 2,400 passengers, produce revenues of about $58,000 and incur expenses of almost $145,000, and that such service would fall more than $104,000 short ($44.34 per forecast passenger) of meeting the carrier's full return and tax requirement. Although we have adjusted Allegheny's traffic forecast upward to take into account an improved service pattern, we note that even a 50-percent increase in revenues would still produce a result of more than $83,000 short ($23.44 per forecast passenger) of meeting the carrier's full return and tax requirement. In addition, the Lawrenceville/Vincennes area is suitably connected to several nearby air service centers by convenient and reasonably priced alternate means of transportation.[4] Highways providing speedy private automobile travel connect Lawrenceville/Vincennes to Evansville, Terre Haute and Indianapolis over the 47-mile, 50-mile and 108-mile routes, respectively. Conveniently scheduled bus service connects Vincennes: to Terre Haute with four daily round trips—one-way travel time is 1 hour 20 minutes and the fare is $2.65; to Evansville with four daily round trips—one-way travel time is 1 hour 30 minutes and the fare is $2.55 and; to Indianapolis with three daily round trips—one-way travel time is 3 hours and 20 minutes and the fare is $5.05.

Interested persons will be given 20 days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final.[5] We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If any evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein, and amending Allegheny Airlines, Inc.'s certificate of public convenience and necessity for Route 97 so as to delete Lawrenceville/Vincennes therefrom;

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 20 days after service of a copy of this order, file with the Board and serve upon all persons listed in paragraph 5 a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;[6]

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein;

5. A copy of this order shall be served upon Allegheny Airlines, Inc., Mayor, City of Vincennes; Mayor, City of Lawrenceville; Director, Indiana Aeronautics Commission; Chairman, Bi-State Authority, Lawrenceville-Vincennes Municipal Airport; Director, Illinois Department of Aeronautics; Manager, Lawrenceville-Vincennes Airport; and Postmaster General, Attention Assistant General Counsel of Transportation, Washington, D.C.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73-2489 Filed 2-7-73;8:45 am]

[Docket No. 25184]

SERVICIO AEREO DE TRANSPORTES COMERCIALES (SATCO)

Notice of Prehearing Conference and Hearing

Foreign air carrier permit, Peru—Intermediate Points—Miami-Washington-Montreal, Peru—Intermediate Points—Los Angeles.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 20, 1973, at 10 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge Frank M. Whiting.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference

[1] Allegheny was permitted by Order 69-12-65, dated Dec. 15, 1969 to temporarily suspend service at Lawrenceville/Vincennes for a period of 3 years. The suspension expired on Dec. 15, 1972 but was extended in Order 72-12-37, Dec. 11, 1972, for 60 days past the effective date of the decision on this application. In that order it had been noted that "the subsidy cost, the low traffic at the point, the carrier's reasonable efforts to promote traffic, and the availability of air service at Evansville and Terre Haute, when viewed in the aggregate, warrant a temporary suspension of Allegheny's authority."

[2] Lawrenceville/Vincennes is an authorized intermediate point between Terre Haute, Ind. and Evansville, Ind. on Allegheny's segment 10.

[3] The passengers boarded by Allegheny were 2.3 per departure during this promotional period.

[4] Vincennes and Lawrenceville are connected by a 13-mile, divided limited-access highway.

[5] We also tentatively find that the carrier is fit, willing, and able properly to perform the certificate obligations which will result from the changes proposed herein and to conform to the provisions of the Act and the Board's regulations and requirements thereunder.

[6] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further such motions, requests, or petitions for reconsideration of this order will be entertained.

unless a person objects or shows reason for postponement on or before February 13, 1973.

Dated at Washington, D.C., February 2, 1973.

[SEAL] ROBERT L. PARK,
Associate Chief Administrative Law Judge.

[FR Doc.73-2488 Filed 2-7-73;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on December 31, 1972, the authority of the U.S. Department of Commerce to fill by noncareer executive assignment in the excepted service the positions of Director, Office of State and Technical Services, Office of the Assistant Secretary for Science and Technology, Deputy Assistant Secretary for Economic Affairs and Executive Director, National Industrial Pollution Control Council, Director, Office of Telecommunications, Office of Assistant Secretary for Science and Technology, Deputy Assistant Secretary for Science and Technology, Assistant Secretary for Science and Technology, Immediate Office, Deputy Director, Office of Minority Business Enterprise, Director, Office of Business Services, Office of the Assistant Secretary for Domestic and International Business, and Special Assistant to the Under Secretary, Office of the Under Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2492 Filed 2-7-73;8:45 am]

DEPARTMENT OF LABOR

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on December 31, 1972, the authority of the Department of Labor to fill by noncareer executive assignment in the excepted service the positions of Deputy Under Secretary, Office of the Secretary, Office of the Under Secretary and Deputy Assistant Secretary for Wage and Labor Standards, and, Director, Office of Federal Contract Compliance, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Asssitant to the Commissioners.

[FR Doc.73-2495 Filed 2-7-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on December 31, 1972, the authority of the Federal Communications Commission to fill by noncareer executive assignment in the excepted service the position of Deputy Chief, Broadcast Bureau.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2494 Filed 2-7-73;8:45 am]

FEDERAL POWER COMMISSION

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on December 31, 1972, the authority of the Federal Power Commission to fill by noncareer executive assignment in the excepted service the position of Assistant to the Chairman, Commissioners and Offices, Office of the Chairman.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2493 Filed 2-7-73;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on November 16, 1972, the authority of the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Associate Director for Legal Services, Office of Legal Services.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2496 Filed 2-7-73;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revoked on November 16, 1972, the authority of the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Chief, Community Action Support Division, Office of Operations.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2497 Filed 2-7-73;8:45 am]

DELAWARE RIVER BASIN COMMISSION

[Docket No. D-70-325]

PROPOSED EDGE MOOR ELECTRIC GENERATING STATION EXPANSION

Public Notice of Availability of Draft Environmental Statement

In accordance with the National Environmental Policy Act of 1969 and the Delaware River Basin Commission's rules of practice and procedure (§ 2-3.5.2) notice is hereby given of the availability of the draft environmental statement as of February 1, 1973, which discusses the environmental impact of the proposed expansion of the Edge Moor Electric Generating Station located at the confluence of Shellpot Creek and the Delaware River in Wilmington, New Castle County, Del. The draft has been prepared by the Commission based upon Delmarva Power and Light Co.'s environmental studies and the Commission's staff analysis of the proposed action.

The proposed development includes the construction of Unit 5, an oil-fired steam-electric generating unit with a capacity of 400 megawatts alongside an existing plant, relocation and reconstruction of intake and discharge systems, replacement of the four existing coal-fired units with oil-fired units, two new oil storage tanks, dredging and an on-site domestic waste system.

Copies of the Draft and the applicant's environmental report and supplements may be examined in the library at the office of the Delaware River Basin Commission, 25 State Police Drive, Trenton, NJ, and in the library of the Water Resources Association of the Delaware River Basin, 21 South 12th Street in Philadelphia (609—883-9500). Copies of the application and draft environmental statement are available for distribution to persons or agencies upon request.

A public hearing on the proposed action will be held at the February meeting of the Delaware River Basin Commission. Formal hearing notices will be sent specifying the date, time, and place at least 10 days prior to the hearing.

Comments on the subject draft environmental statement may be submitted to the Delaware River Basin Commission by public or private agencies or individuals concerned with environmental quality. In order to be considered by the Commission, comments must be submitted no later than March 16, 1973.

W. BRINTON WHITALL,
Secretary.

JANUARY 26, 1973.

[FR Doc.73-2421 Filed 2-7-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 73-113]

MID-MICHIGAN BROADCASTING CORP.

Application Ready and Available for Processing

FEBRUARY 1, 1973.

The following application seeking a construction permit to operate the facilities of station WCRM, Clare, Mich., was accepted for filing by memorandum

opinion and order, FCC 73-112, adopted January 31, 1973. An application for renewal of license for station WCRM was denied for lack of prosecution by memorandum opinion and order released November 29, 1972, Bi-County Broadcasting Corp., FCC 72M-1473, reconsideration denied, FCC 72M-1582, released December 27, 1972. In accepting this application for filing, the Commission waived the AM "freeze," note 2 to section 1.571 of the rules. Similarly, we will accept any other application for consolidation which proposes essentially the same facilities.

NEW, Clare, Mich., Mid-Michigan Broadcasting Corp., Req: 990 kHz, 250 W, DA, Day.

Pursuant to the provisions of §§ 1.227 (b)(1), 1.591(b) and note 2 to § 1.571 of the Commission's rules, any application, in order to be considered with this application must be in direct conflict and tendered no later than March 14, 1973.

The attention of any party in interest desiring to file pleadings concerning this application, pursuant to § 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

Action by the Commission January 31, 1973.[2]

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-2514 Filed 2-7-73;8:45 am]

[Docket No. 19674; File No. BR-1220; FCC 73-106]

WOIC, INC.

Memorandum Opinion and Order Designating Application for Hearing

In regard applications of WOIC, Inc., for renewal of license of station WOIC, Columbia, S.C.

1. The Commission has before it for consideration: (i) the above-captioned license renewal application for Station WOIC, Columbia, S.C.; (ii) an untimely petition to deny the aforenoted application;[1] and (iii) various responsive and related pleadings.

The parties. 2. The instant renewal application reflects that WOIC, Inc., the licensee of standard broadcast Station WOIC, is wholly owned by Speidel Broadcasters, Inc., which also controls the corporate licensees of the following standard broadcast stations: WTMP, Tampa, Fla.; WPAL, Charleston, S.C.; WYNN, Florence, S.C.; WSOK, Savannah, Ga.; and WHIH, Portsmouth, Va. Policy control over all of the above stations, including WOIC, is formulated and exercised by the Speidel corporation's president and majority stockholder, Joe Speidel III. The operational, day-to-day direction of the stations, which are principally programed and oriented to the licensee's concept of black audience needs, is exercised by local station personnel under the general supervision of Mr. Speidel and other Speidel corporate officials. In December 1970, Mr. Speidel became the sole stockholder of Speidel Broadcasters, Inc.; thereafter, control of these stations' licensee corporations was transferred, with Commission approval, to Mr. Speidel as an individual. Beginning in May of 1971, Speidel assigned, with Commission approval, the licenses for Stations WTMP, WPAL, WYNN, WSOK, and WHIH to new corporate owners.[2]

3. Petitioner, the Columbia Citizens Concerned with Improved Broadcasting (Columbia Citizens), is an association comprised of several local citizens who have joined together for the purpose of examining and improving the broadcast service to the black community of Columbia, S.C. Many of the 12 identified members of Columbia Citizens are also officers or directors of a number of national and statewide organizations, such as the American Civil Liberties Union of South Carolina, the South Carolina Council on Human Relations, Inc., and the American Friends Service Committee, which allegedly join petitioner in its request to deny the WOIC renewal application. In the same vein, affidavits, expressing general support of petitioner's allegations, have been submitted from 19 leaders of Columbia's black community, who "join themselves as parties to the Petition to Deny".

The petition to deny. 4. Columbia Citizens predicates its request to deny the WOIC renewal application upon the station's alleged insensitivity to the needs and aspirations of blacks, its failure to inform, educate or serve as a means of self-expression for Columbia's black Community, and its economic exploitation of that community. Specifically, petitioner contends that the licensee discriminates against blacks in its employment practices; that Station WOIC has made no serious effort to ascertain the needs of the community's black residents; and that the station's program service, which is highly commercialized, is unresponsive to the needs of blacks and other groups in the WOIC service area and varies in significant respects from the programing proposal set forth by the licensee in its 1966 renewal application. The petitioner further submits that the licensee has attempted to conceal its discriminatory practices and its deficient program service through the use of misleading and inaccurate job descriptions and program classifications. In the same vein, Columbia Citizens challenges Speidel's character qualifications, alleging improper conduct in the operation of his Tampa, Fla., station, WTMP.[3]

Discrimination. 5. According to Columbia Citizens, all of the employees of Station WOIC who exercise actual control of station policy and operation are white, whereas blacks, who comprise a majority of the station's personnel, are neither permitted to participate in significant policy or programing decisions nor promoted to policymaking positions. Petitioner contends that the station's program director, Charles Derrick, a black, has no influence or control over programing policy; that another black employee, Paris Eley, whom the licensee describes in its renewal application as a part time news director and announcer, does not have the title of news director and has been refused permission to cover news events on behalf of the station; and that Rev. William Bowman, who reportedly also devotes time to the station's news operation, has, in fact, no news responsibilities.[4] Columbia Citizens also alleges that whenever policymaking positions become available, whites with inferior qualifications are hired to fill such vacancies. It is petitioner's contention that the foregoing discriminatory practices are not limited to the WOIC operation, but rather are common to all of the Speidel-owned stations.

6. In its opposition, the licensee denies any preferential promotion of whites at Station WOIC and maintains that Station WOIC, as well as the other Speidel

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[2] Commissioners Burch (Chairman), Robert E. Lee, H. Rex Lee, Reid, Wiley and Hooks, with Commissioner Johnson concurring in the result.

[1] As required, the WOIC renewal application was filed 90 days prior to the expiration of the preceding license term. See Rule 1.539 (a). Pursuant to Rule 1.580(i), a petition to deny WOIC's application should have been filed on or before Nov. 1, 1969; however, the instant petition to deny was not submitted until Dec. 1, 1969. No adequate explanation for the delay is proffered by petitioner, nor is a waiver of Rule 1.580(i) requested. See Report and Order (Docket No. 18495), concerning broadcast license renewal applications, 20 FCC 2d 191, 192-93, 16 RR 2d 1512, 1514 (1969). Accordingly, the instant petition to deny will be dismissed. Due to the nature of the matters raised, however, we have elected to consider the petition on its merits as an informal objection filed pursuant to Rule 1.587. See Universal Communications Corp., 27 FCC 2d 1022, 21 RR 2d 359 (1971).

[2] On Sept. 5, 1972, the licensee, as required, submitted a renewal application covering the forthcoming triennial license period (Dec. 1, 1972 through Dec. 1, 1975) and published and broadcast the prescribed local notice of this filing. While we could delay consideration of the 1972 renewal application until petitioner has had an opportunity to examine and comment thereon, the Commission believes that since a hearing is required in any event (see paragraphs 12 and 22, infra), the more appropriate procedure is to designate for hearing both renewal applications and require petitioner to raise any additional matters with respect to the 1972 application at the hearing. See Rule 1.229.

[3] The Station WTMP matter was set forth by petitioner in a February 1971 supplement to its petition to deny. The licensee urges the rejection of the motion for leave to supplement and the tendered supplement, arguing that the allegations are both untimely raised and irrelevant to a resolution of the WOIC renewal application. Since the matter relates to the character qualifications of the licensee's majority stockholder (Speidel now holds a 83.3 percent stock interest), the Commission will grant the late-filed motion and consider the Columbia Citizens petition as supplemented. See Western North Carolina Broadcasters, Inc., 8 FCC 2d 126, 10 RR 2d 73 (1967).

[4] No affidavits in support of Columbia Citizens' allegations have been supplied from these WOIC personnel. Accordedly, the allegations are based upon statements made by Derrick and Eley in a discussion with petitioner concerning the operation, practices and policies of Station WOIC.

stations, operate under a fair employment policy providing equal opportunities for blacks, both in initial employment and in advancement. In support thereof, the licensee points out that the personnel profile for the Speidel stations, including Station WOIC where black employees outnumber whites 10 to 8, reflects the employment of 53 blacks and only 36 whites.[5] As an example of the opportunities for blacks to achieve executive positions at the Speidel stations, the licensee notes that each of the program directors of these six stations is black and that blacks hold other responsible positions at Stations WHIH (general manager), WPAL (station manager), and WTMP (sales manager). With respect to WOIC's purported use of misleading and inaccurate job descriptions, Joe Speidel states in an affidavit that all personnel at his stations bear the responsibilities and duties commensurate with their particular positions. The WOIC general manager confirms Speidel's statement and specifically avers that Derrick's duties as the station's program director include: the responsibility for the quality, acceptability and presentation of commercial material; the assignment and maintenance of the announcers' work schedules; and the institution of all new programs, remote broadcasts and special sports programs. According to Brannon, the WOIC program director also consults with the station's general manager and public affairs director concerning program format changes and new program material. Derrick, by affidavit, attests to the foregoing description of his duties at Station WOIC. With respect to Eley's position at the station, Brannon submits that he personally assigned Eley the responsibilities of the station's news director on a part-time basis and requested him "to stay on top of local news events"; that Eley received a salary increase at that time; and that Eley's announcing duties prevented his full-time devotion to news gathering. According to Brannon, Eley is encouraged to cover news stories on his own initiative and, only on one occasion, was Eley requested by station management not to cover a particular news event.[6] Finally, Brannon describes Reverend Bowman's responsibilities to include the gathering of news pertaining to church activities and to items of a general religious nature for presentation by Station WOIC. Again, the WOIC employee, by affidavit, confirms the licensee's description of his station activities.

7. In reply, Columbia Citizens submits that its claim of discrimination against blacks is based upon a document which was sent to the Richland County Citizens Committee, Inc., by Derrick and Eley, who therein alleged the absence of blacks in policy-making positions at the Speidel stations and called for the establishment of a conscientious black news department and a separate black public relations department, headed by a black, to serve as liaison between Station WOIC and Columbia's black community. These employees also opined that several WOIC programs (i.e., "Kaleidescope" and "Definition") were not relevant to the needs of the black community and that the station's criterion for hiring black salesmen (i.e., a college degree with prior experience in the field) was unrealistic. Notwithstanding the licensee's description of its employees' responsibilities, petitioner posits that Derrick has little or no authority for planning or initiating programing; that consultation with Derrick concerning program matter is a mere formality before the station's general manager of public affairs acts in this regard; and that the public affairs director would be required to report to Derrick, rather than the reverse, if he was truly the station's program director. Citing Derrick's opinion of the Kaleidescope and Definition programs, Columbia Citizens asserts that Derrick's programing recommendations are ignored at Station WOIC. In petitioner's view, Brannon's unawareness of the fact that his instructions were misunderstood by Eley and "were not in fact being carried out", reflects a lack of intimacy between the parties and casts doubt upon Eley's real authority over news. According to Columbia Citizens, Reverend Bowman does not present news "in the sense of objective reporting of events".

8. The Commission does not believe that a substantial and material question of fact has been raised with respect to the licensee's employment practices. Petitioner's claim that whites with inferior qualifications are preferred over better qualified blacks is completely unsubstantiated. No facts or examples of any person allegedly discriminated against because of race is supplied by Columbia Citizens, and the Commission notes the significant absence of any complaints of discriminatory conduct from station personnel, former employees, or job applicants. While some WOIC employees may disagree with the criterion used by the station to select its sales personnel, there is no indication that a different standard is employed with respect to prospective white salesmen or that the criterion used constitutes an artificial barrier to black employment. Moreover, the station's hiring pattern and employment profile belie a suggestion that blacks are confined to menial pursuits or are otherwise denied equal employment opportunities. The same is true with respect to the other Speidel stations. In short, petitioner's allegations lack the required specificity which would warrant exploration of the licensee's employment practices in an evidentiary hearing. See Time-Life Broadcast, Inc., 33 FCC 2d 1050, 1059, 23 RR 2d 1165, 1176 (1972). In the same vein, petitioner's assertions that several WOIC employees do not exercise the responsibilities suggested by their job descriptions or titles are not only unsupported by factual evidence, but also refuted by the sworn statements of station officials which, in turn, are corroborated by the employees in question. In this regard, we note that the licensee is not required to bestow program autonomy upon its program director and that no curtailment of Eley's news-gathering activities on behalf of the station apparently resulted from the misunderstanding surrounding his job classification. See note 6, supra. In view of the foregoing, the Commission concludes that the licensee did not misrepresent the responsibilities and functions of its program director and its principal news-gathering personnel.

Ascertainment of community needs. 9. In support of its contention that the licensee has inadequately surveyed the needs of Columbia's black community, Columbia Citizens principally argues that blacks comprise approximately 42 percent of the population served by Station WOIC; that of the 58 representatives of the area's business community who were consulted by means of a mailed questionnaire, only seven are blacks; that several of the 58 representatives are advertisers of Station WOIC; and that blacks comprise about one-half of the 13 area residents who were considered by virtue of their multiple affiliations to be especially qualified to speak on community needs and who were personally interviewed by the licensee. Columbia Citizens also submits that the narrative description of community needs set forth by the licensee in the subject renewal application appears to be based largley upon a report entitled "Opportunity to Grow in South Carolina 1968–1985," which allegedly gives little attention to the black community's particular needs, tastes, and desires as understood by black leaders. In the same vein, petitioner charges that neither the WOIC public affairs director, whom it believes is in charge of ascertaining Columbia's needs and interests on behalf of the licensee, nor any other white policy-making personnel of the licensee has any substantial involvement with blacks or their activities. In petitioner's view, the licensee has not sampled an appropriately broad spectrum of community opinion for a municipality the size of Columbia.[7] Columbia Citizens further contends that two of the 13 listed community spokesmen deny having been personally interviewed by any representative of Station WOIC.

10. With respect to the alleged inadequacy of its ascertainment of community needs, the licensee argues that Columbia

[5] In an affidavit tendered with the licensee's opposition pleading, Station WOIC's general manager, R. H. Brannon, avers that it is his practice to give first priority to black applicants whenever the hiring of a new employee is being considered. The affiant further states that all of the five employees, who have been added to the WOIC staff during the preceding 3 years, are black.

[6] That news event concerned a strike of hospital workers in Charleston, S.C., which is located approximately 120 miles from Columbia. Brannon informed Eley that the event could be more fully and economically covered by Station WPAL which would thereupon provide that coverage to Station WOIC. In his affidavit, Eley acknowledges his misunderstanding concerning his news title and confirms the accuracy of Brannon's description of his station responsibilities and the Charleston hospital strike incident. The affiant further avers that "I use my discretion as to what local news to cover and subject only to my other duties on the air and transportation, I do cover a lot of local material".

[7] Allegedly, the population of Columbia totaled 133,500 persons in 1969.

Citizens has disregarded the continuing relationship, which the station's personnel maintains with the community and its organizations and which provides the licensee with much useful information concerning the community's needs and interests. As evidence of the civic involvement of station personnel, the licensee points to exhibit 1A of the subject renewal application which sets forth approximately 28 area organizations, 14 of which are reported to be primarily concerned with needs and interests of Columbia's black community.[8] The licensee also maintains that its community ascertainment efforts were not limited to the 58 questionnaire responses and the 13 personal interviews challenged by petitioner. Rather, discussions were conducted with station personnel, a majority of whom are black, and additional questionnaires were distributed to WOIC personnel who were to use them in interviewing as many Columbia citizens as possible during their daily station activities. According to the licensee, the community needs and interests delineated in its exhibit 1B were elicited from the foregoing ascertainment efforts and the personal and telephone interviews which were also conducted by the station's general manager and public affairs director. With respect to the two community leaders who allegedly were not personally interviewed, the WOIC public affairs director explains that the questionnaire was used as a guide for the personal consultations; that the individuals, both of whom are members of the Columbia Citizens association, visited the station and were queried by her with respect to the survey; and that these leaders, instead of responding to the questionnaire at that time, left with copies of the questionnaire which they subsequently completed and returned to the station. Since station personnel had spoken directly with these leaders, they were included in the listing of personal interviews.[9]

11. The licensee's ascertainment surveys were conducted and the subject renewal application was filed with the Commission prior to the promulgation of the proposed Primer, which was intended to clarify and provide guidelines for the ascertainment of community problems. On February 23, 1971, the Commission released its Report and Order adopting the Primer. See 27 FCC 2d 650, 21 RR 2d 1507. Among other things, the Primer requires that broadcast applicants, including licensees seeking renewal of their authorizations, consult with a representative cross-section of community leaders and members of the general public in the area to be served and design programing responsive to those ascertained community problems as evaluated. Since the Primer contemplates a person-to-person dialogue between the applicant and the persons representing the significant groups that comprise the community, only principals or management-level employees of the applicant can conduct the required personal interviews, whereas greater latitude is afforded an applicant in its consultations with members of the general public, provided that these interviews are generally distributed throughout the station's service area. Measured against these standards the licensee's ascertainment surveys are clearly inadequate. Nor do they fare better when tested by the standards in effect at the time the WOIC renewal application was filed.

12. In our August 22, 1963, Public Notice entitled "Ascertainment of Community Needs by Broadcast Applicants," FCC 63-847, 33 FR 12113, 13 RR 2d 1903, we stated that applicants should supply "full information" on the steps taken to become informed of the real community needs and interests of the area to be served and that the range of group leaders consulted should be representative of the various community elements—"public officials, educators, religious, the entertainment media, agriculture, business, labor, professional and eleemosynary organizations and others who bespeak the interests which make up the community." A necessary part of the ascertainment process is also the surveying of the general listening public who will receive the station's signals. See Report and Statement of Policy Re: Commission En Banc Programing Inquiry, FCC 60-970 (25 FR 7291), 20 RR 2d 1901, 1915. The licensee identified contacts with representatives of Columbia's business community and with 13 area leaders; however, the Commission is not persuaded that these contacts, standing alone, represent a fair, cross-sectional sampling of the groups, leaders and citizens that comprise the community of Columbia. See Santa Fe Television, Inc., 18 FCC 2d 741, 16 RR 2d 934 (1969). While the licensee argues that these formal survey consultations should be viewed in conjunction with the continuing participation of Station WOIC and its personnel in the affairs and activities of the Columbia community, the latter efforts are not sufficiently detailed to show a meaningful investigation of the community's needs by this method[10] and to support the required conclusion that the licensee, through its various ascertainment efforts, has acquired a reasonable knowledge of its community's needs and has designed its program proposal in response thereto. See United Television Co., Inc. (WFAN-TV), 18 FCC 2d 363, 16 RR 2d 621 (1969); Vernon Broadcasting Co., 12 FCC 2d 946, 13 RR 2d 245 (1968). Therefore, the Commission concludes that an evidentiary inquiry is warranted so that the licensee can fully demonstrate its efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests.[11] See WPIX, Inc. (WPIX), 20 FCC 2d 298, 17 RR 2d 782 (1969); United Television Co., Inc. (WFAN-TV), supra. We do not believe, however, that a misrepresentation issue concerning the licensee's survey contacts is warranted. The WOIC public affairs director's explanation concerning the listing of the two Columbia Citizens members with the other community leaders with whom the licensee had directly spoken, is not contradicted and demonstrates a reasonable predicate for the licensee's action. Contrary to petitioner's opinion, this matter does not adversely reflect upon the licensee's requisite qualifications. See RKO General, Inc., 33 FCC 2d 664, 23 RR 2d 930 (1972).

Program service. 13. Generally, Columbia Citizens submits that Station WOIC primarily caters to the culture, the habits and the stereotypes of the segregated past by presenting a steady diet of soul and gospel music and makes no countervailing effort to contribute to the communication of liberating information, education, and ideals.[12] Columbia Citizens acknowledges that, upon request, station time is made available to organizations such as the Urban League

[8] The licensee notes that Miss Cynthia Gilliam, its public affairs director, is and has long been substantially involved in public service activities of deep concern to Columbia's black residents and that the submitted portfolio of her associations and accomplishments covers many areas. In addition, Miss Gilliam, by affidavit, denies that she is in charge of the licensee's community ascertainment efforts. The affiant further states that she does not have the authority to make the actual determinations regarding programing and program policy at Station WOIC—that authority is the province of the station's general manager under the policy direction of the licensee's owners.

[9] In reply, Columbia Citizens renews its argument that the licensee has contacted only a handful of blacks, despite the substantial number of blacks residing in its service area, and that WOIC's survey efforts, individual or collectively, do not comport with the requirements either set forth by the Commission in its proposed Primer on Ascertainment of Community Problems by Broadcast Applicants, 20 FCC 2d 880 (1969), or established in the Commission's pronouncements and caselaw since Minshall Broadcasting Company, Inc., 11 FCC 2d 796, 12 RR 2d 502 (1968).

[10] Similarly, the survey efforts of these employees, as well as the personal interviews conducted by the station's management-level personnel, suffer from a lack of specificity. See Southern Minnesota Supply Co. (KYSM), 12 FCC 2d 65 (1968).

[11] In this regard, the licensee will be permitted to demonstrate its ongoing efforts to remain convergant with and attentive to the community's problems throughout the period when the original renewal application was in deferred status. Cf. Chuck Stone v. FCC, D.C. Cir. Case No. 71-1163, decided June 30, 1972, 24 RR 2d 2105, rehearing denied Sept. 1, 1972, 25 RR 2d 2001; WKBN Broadcasting Corp., 30 FCC 2d 958, 974, 22 RR 2d 693, 625-26 (1971), reconsideration denied FCC 72-1002, released Nov. 15, 1972.

[12] In Exhibit 1C of the 1969 renewal application, the licensee detailed several of the ascertained community problems and the public affairs programs it proposes to broadcast during its next license term to meet these problems. No specific allegations are directed by petitioner to the community responsiveness of the programing material set forth in this exhibit which, in any event, will be explored under the specified Suburban issue. Accordingly, we will herein consider petitioner's allegations in the context of the programing which Station WOIC presented from 1966 to 1969.

and NAACP; however, the petitioner charges that the licensee neither participates in any significant manner in the planning and preparation of these presentations nor develops programing addressed to community needs with its station personnel. It is the station's policy, opines petitioner, to run a low-cost operation by presenting a few discussion programs produced by others without cost to it and a "rip-and-read" news operation that provides very little local news and almost no local news of particular concern to Columbia's black population.[13] The petitioner further contends that the station does not, as claimed, devote 65 percent to 70 percent of its newscasts to local and regional events; that the description of a number of the programs set forth in the station's program schedules are misleading; and that only three of the 14 public service type programs promised in Station WOIC's 1966 renewal application were presented during the composite week.

14. The licensee denies that its programing is unresponsive to the needs of its community as a whole or to Columbia's sizable black citizenry and, in support thereof, the licensee points to a number of typical programs broadcast during the last year of its past license term, such as:

"Memorandum". The official 15-minute weekly program of the Columbia Urban League. Approximately 85 percent of the programs utilize a discussion format hosted by the League's executive director and, aside from programs and projects of the organization, are devoted to disseminating information regarding housing, employment, opportunities, voter registration and educational projects.[14]

"Definition". This is a discussion program composed of a panel of area high school youth and a professional moderator. The program is presented on a weekly basis during a 15-minute time segment and presents comments from students of different sex, race, religion and economic background.[15]

"Employment Guidance Center Program" (formerly, "Good Advice"). This program has been presented for 3 years and is now broadcast for a 30-minute period on Saturday mornings. The program, moderated by an employment counselor from the organization, consists of interviews and discussions with prominent area businessmen, industrialists and professionals regarding their firms' educational requirements for employment. Information concerning the different types of employment available in the area and the salary range, fringe benefits and similar areas of interest to a prospective employee is also aired during this program.

"Palmetto Profiles" (formerly "Columbia Close-Up"). A 15-minute, weekly interview-discussion program featuring the executive director of a planned-parenthood organization for Richland and Lexington Counties. Participants on this program include doctors, lawyers, judges, OEO officials, and other community leaders concerned with improving the health and welfare of the area's residents.

"Homemaker Program". This is a series of five, 5-minute programs presented weekly in cooperation with the Home Economics Division of the South Carolina Department of Education. Programs in this series provide basic information on such topics as pre-natal care, obtaining the most dollar and food value from food stamps and insurance values.

"Senior Citizens Program". A 15-minute, weekly program featuring the coordinator of the Foster Grandparent's project located at Pineland, a State training school and hospital. The program is designed to disseminate information of value to the area's senior citizens and guests have included physicians specializing in geriatrics and representatives of the local Social Security Office and the state employment service.

The licensee's past programing has also included a special 30-minute, panel discussion program on juvenile crime with a judge and the chief correctional officer for the Richland County Family Court, a police captain, and the public relations director for the Richland County Citizens Committee; and a weekly, 30-minute program that was aired for a 3-month period in 1969 and that dealt with equal job opportunities. On a seasonal basis, Station WOIC has also presented a program, consisting of news, discussions and interviews by students and faculty members of South Carolina State College, and a program containing advice on filling out Federal tax forms and other pertinent information relating to the requirements and services of the Internal Revenue Service.[16]

15. Turning to petitioner's more specific allegations, the licensee contends that only two of the 14 specifically mentioned programs which it planned to present during its 1966-69 license term were not undertaken during that period, namely, a series on good citizenship and a series dealing with releases from various governmental agencies and public service institutions.[17] The licensee further maintains that six of the promised programs were presented under the same or different titles during the composite week and that another program was preempted by a special local program on the date selected by the Commission. According to the licensee, the remaining programs or substitutes of similar service characteristics were aired during the license term. With respect to the allegations addressed to its news operation, the licensee states that, as in the case of many stations of its size, it does not maintain a full-time news department. Rather, it principally relies upon the news-gathering activities of Eley and Reverend Bowman (see para. 6, supra), whose efforts are complemented by the remaining station members and announcers who, as part of their regular duties, are also alert to newsworthy happenings in the community and are available to cover local news events, if necessary. In this manner, station personnel covered a school problem in Lexington, S.C., a disturbance on the campus of South Carolina State College, and a highway controversy in Columbia. The station also receives many requests from various community groups for coverage of future events and activities and, in its general manager's opinion, the station does its best to provide the requested news coverage and at the same time, afford airtime to all of Columbia's community groups with particular emphasis to those dealing with the community's black citizens. Regarding its estimate of the amount of airtime to be devoted to local and regional news events, the licensee

[13] In support of the latter allegation, petitioner submits an affidavit from several of its members who, as leaders of black community organizations, have regular occasion to request station coverage of events and issues of alleged importance and concern to Columbia's black community. The affiants state that they have repeatedly been informed by station personnel that no news reporters are available and that the news items should be given to the announcer on duty at the studio. It is the affiants' belief that Station WOIC does not maintain a news department and has no news reporters.

[14] A similar program, "Swing into Action," which is also presented under the aegis of the Urban League, dealt with black economic development. Other weekly programs devoted to apprising blacks of the services rendered by Columbia's legal aid agency (Your Neighborhood Lawyer) and to explaining the municipal, county, State and national governmental structure, the electoral college and the proper use of voting machines (Voter Education Project—"V.E.P. Report") have also been aired by Station WOIC.

[15] According to the WOIC general manager, the format of this program is subject to modification. Due to difficulties encountered in arranging an appropriate student panel on a regular basis during the school year, it is sometimes necessary for the program moderator to present music accompanied by a narrative description.

[16] In addition, the station's public affairs director identifies those members of the Columbia Citizens association, who have utilized the broadcast facilities of Station WOIC on behalf of their other organizations and who have been guest participants on such public affairs programs as "Palmetto Profiles" and "Employment Guidance Center".

[17] Reportedly, the subject matter of these projected series was elsewhere treated in the station's program service.

submits that 42 percent of the news broadcast during the composite week was clearly related to local events[18] and that the inclusion of the local news, which was incorporated within the station's other newscasts, would bring Station WOIC's local news coverage up to at least 65 percent during that selected period.

16. In its reply pleading, Columbia Citizens reiterates its objections to Station WOIC's program service and submits, for the first time, that repeated logging irregularities have made it impossible to determine the public affairs programs the licensee actually presented during the composite week. Columbia Citizens points out that on 4 of the 5 weekdays during the 8 to 8:30 p.m. time period, the licensee scheduled multiple public affairs programs at the same time without indicating which, if either program, was presented. Columbia Citizens further submits that several programs, not presented in cooperation with a bona fide educational institution, are inaccurately listed on the logs as educational programs, and that a U.S. Army recruiting program and a National Guard program are wrongfully classified as public affairs programs.[19] It is also revealed for the first time in this pleading, that petitioner monitored Station WOIC's programing for a full week in November of 1969. For a variety of reasons, however, only 1 day's monitoring, that of November 21, 1969, provides the basis for petitioner's allegations that the news broadcast by Station WOIC amounted to 4.2 percent of its total airtime, rather than 8.7 percent as claimed in the licensee's composite week analysis and that local and regional news only amounted to 45.3 percent of the news broadcast by Station WOIC, exclusive of weather forecasts and temperature checks.[20] Finally, Columbia Citizens argues that Station WOIC neither broadcasts nor has the capacity to present any local news of a type which would require an affirmative effort on the part of the station's staff. In support thereof, petitioner submits the affidavits of two of its mmebers, Dewey Duckett, Jr., and Isaac W. Williams, who stated therein that Station WOIC does not cover or report upon events of interest to the black community, such as the regular public meetings of the governing board of directors of the Lexington-Richland Economic Opportunity Agency, the Columbia City Council, and the Richland County school board; that Mr. Williams, as field director for the South Carolina NAACP, was not interviewed by the station concerning his organization's opposition to the Judge Haynesworth nomination to the U.S. Supreme Court and its reaction to the Senate's disapproval of the appointment; and that news affecting Columbia's black residents is often not covered by Station WOIC because of its lack of news staff.[21] On the basis of its monitoring, Columbia Citizens also faults Station WOIC for not reporting the visit of Brig. Gen. F. Davison, one of the Army's highest ranking black officers, to nearby Fort Jackson and for not promptly reporting the Senate's rejection of the Judge Haynesworth appointment.

17. As the Commission has pointed out on numerous occasions, the decision as to the choice of a station's entertainment format is in the sound discretion of the licensee. E.g., KNOK Broadcasting, Inc., 29 FCC 2d 47, 21 RR 2d 960 (1971). Here, as admitted by Columbia Citizens, the entertainment format selected by Station WOIC does have wide support among Columbia's black residents, and we are not convinced that the Commission should interfere and require the licensee to replace its present entertainment format. See Interstate Broadcasting Co., Inc., 35 FCC 2d 737, 24 RR 2d 874 (1972). Nor are we persuaded by petitioner's general allegations that the station's informational programing is insensitive to the community's needs. See Black Identity Education Association, FCC 72-378, 21 RR 2d 746. On the contrary, an examination of the illustrative public affairs programs listed in the WOIC renewal application discloses programs clearly addressed to community problems, including several programs specifically attentive to the needs and interests of Columbia's black citizenry. See paragraph 14, supra. Programs dealing with black problems in the areas of civil rights, housing, employment opportunities, social welfare, civics and economic development have apparently been broadcast by Station WOIC.[22] That petitioner, and even some station employees, might regard certain individual programs as irrelevant to the interests of the black community does not raise an issue justifying our intrusion in this area. See WKBN Broadcasting Corp., supra, 30 FCC 2d at 969-71, 22 RR 2d at 621-22. To belittle the station's public affairs programing on the basis of the licensee's expenditures for these programs is not warranted, especially where, as here, that programing as a whole appears responsive to the community's needs and interests. Moreover, the Commission does not consider the relationship between revenues and program expenditures as a factor in evaluating the adequacy of a licensee's public affairs programing, albeit a request to that effect is contained in a current rule making petition (RM-1837). To apply any new standards in this regard on a case-by-case basis, without first subjecting them to the comprehensive consideration inherent in the rule making process, is not appropriate. See Alianza Federal de Pueblos Libres, 31 FCC 2d 557, 22 RR 2d 860 (1971).

18. Petitioner's principal objection to the news service of Station WOIC appears to be that the station has no full-time news department or reporters. Initially, we must note that our concern in this regard "is only that the station show that it has employed sufficient personnel to assure the presentation of an

[18] This figure was calculated by adding the broadcast time of the programs that dealt with news of a predominantly local nature, such as, church and civic news, funeral announcements, and meetings, to the aggregate broadcast time of the newcasts entitled "South Carolina News Roundup."

[19] It is also suggested by virtue of the station's request for a listing of the participants on the Employment Guidance Center's program (see para. 14, supra) that the licensee has little or no control over the content of Station WOIC's public affairs programs. Such inference is not warranted, and since petitioner cites no specific instance where the licensee has been remiss in this regard, this unsupported accusation will not be considered further.

[20] In petitioner's opinion, reliance cannot be placed upon the sample program logs in analyzing the station's newscasts since the monitoring disclosed that the hourly and half hourly news headline programs are not always one minute in duration as scheduled and since the content of the station's news programs (i.e., local, regional, and national) is not depicted on the logs. Based upon its analysis of the sample logs, Columbia Citizens further submits that the amount of broadcast time devoted to news fell short of the 10 hours and 15 minutes proposed in the station's 1966 renewal application.

[21] Also tendered with petitioner's reply pleading is an affidavit from "a regular listener of WOIC" who cites the station for its failure to inform listeners of programs of vital concern to the poor, such as social security, welfare benefits and rights, and housing.

[22] Two 14-minute programs listed on the program logs for the composite week were misclassified by the licensee. The obviousness of the error and the fact that the misclassifications did not appreciably enhance the amount of broadcast time devoted to public affairs programing negate an inference that these errors were designed to deceive the Commission. See Scripps-Howard Broadcasting Co., 31 FCC 2d 1090, 1104-05, 22 RR 2d 1069, 1083 (1971). As noted by Columbia Citizens, the licensee was remiss in listing the actual starting time of the programs on its pre-typed logs and in making appropriate corrections and notations as required by Rule 73.112. These shortcomings, however, do not raise a substantial question requiring exploration in a hearing. For the most part, the public affairs programs set forth in the 1966 renewal application were undertaken by the licensee and, according to the sworn statement of the station's public affairs director "WOIC showed [six] of them in its composite week for the 1969 application." This representation is not undermined by the licensee's failure to note the programs' actual starting times, which Columbia Citizens initially raised in its reply pleading. Similarly, petitioner's claimed confusion concerning what programs were aired during the weekday 8-8:30 p.m. time segment can easily be dispelled by reference to Rule 73.112(a)(1)(ii), which states in pertinent part that: "[I]f programs are broadcast during which separately identifiable program units of a different type or source are presented, and if the licensee wishes to count such units separately, the beginning and ending time for the longer program need be entered only once for the entire program. The program units which the licensee wishes to count separately shall then be entered underneath the entry for a longer program, with the beginning and ending of each such unit, and with the entry indented or otherwise distinguished so as to make it clear that the program unit referred to was broadcast within the longer program."

amount of local, national, and international news which is commensurate with the needs of the community." See Letter to Mr. Richard A. Beserra, FCC 72-965, 25 RR 2d 777, 780. Here, the licensee has indicated the general manner by which it becomes acquainted with news happenings of concern to its community and has cited several instances where its personnel, despite their other station duties, have been utilized to cover and report on events which the licensee deemed newsworthy. Petitioner views such coverage as sporadic and without continuity; however, these objections do not raise a material question regarding the station's ability to inform its listeners. Columbia Citizens also urges the Commission to fault the licensee for not immediately interrupting its programing to report the rejection of Judge Haynesworth's appointment[23] and for not covering various other news events relevant to Columbia's black community. A licensee has wide discretion in the area of programing and, in the absence of extrinsic evidence that the licensee has falsified, distorted, or suppressed news, the Commission will not substitute its judgment for that of the licensee in determining what news is of prime interest to its listening audience and the manner in which it should be presented. See Universal Communications Corp., *supra*, 27 FCC 2d at 1025-26, 21 RR 2d at 364-65. Again, we will not interfere with the exercise of the licensee's news judgment where, as here, there is no showing that the licensee consistently and unreasonably ignored important matters of public concern. Compare Radio Station WSNT, Inc., 27 FCC 2d 993, 21 RR 2d 405 (1971). Based upon its analysis of Station WOIC's sample logs, petitioner questions whether the licensee has, in fact, fulfilled its earlier promises with respect to the amount of airtime allocated to news programs, particularly local and regional news. We have carefully examined the program logs covering the composite week and we find that both the petitioner and the licensee have apparently failed to include in their calculations the weather reports and temperature announcements which Station WOIC broadcast during the period in question. See Notes 1 and 4 of Rule 73.112. The consideration of this material resolves the claimed discrepancies relating to the licensee's news broadcasts.[24] In view of the foregoing, the Commission believes that no hearing issue is appropriate with respect to the program service presented by Station WOIC during its past license term.

Commercial practices. 19. Columbia Citizens accuses Station WOIC of devoting an excessive amount of time to commercial announcements and of exceeding its limitation of 25 percent commercial matter in any 60-minute segment on several occasions during the preceding license term. Petitioner further criticizes the licensee for increasing from 25 percent to 30 percent the maximum percentage of commercial matter in normal hours and for permitting up to 20 minutes (33⅓ percent during two 3-hour periods on Thursdays, Fridays, and Saturdays and at all times during election campaigns. The licensee opposes the specification of an issue in this regard, arguing that the preceding license renewal application, as amended on December 30, 1966, reflects that 18 minutes was the maximum amount of commercial matter which it proposed to normally allow each hour and that the only change in its commercial policy, the substitution of Wednesday for Saturday as a heavy traffic day, is responsive to present buying habits in its market and does not represent a substantial variance from Station WOIC's prior commercial practices.

20. Examination of the subject renewal application reflects that the licensee exceeded its 18-minute commercial ceiling in eight of the 124 hourly segments of the composite week and that none of the overages exceeded 20 minutes. The licensee specifically stated that deviations from its normal commercial policy may occur under certain circumstances. It is not alleged that the eight overages did not fall within the specific circumstances provided for by the licensee. Nor has petitioner shown that Station WOIC's commercial policy contravenes our most recent pronouncements regarding commercial standards.[25] See Chicago Federation of Labor and Industrial Union Council, FCC 72-1079, released December 8, 1972. No substantial and material question has been raised concerning the station's commercial practices and no issue is, therefore, warranted. See Mahony Valley Broadcasting Corp., FCC 72-1001, released November 15, 1972.

The station WTMP matter. 21. Columbia Citizens filed a supplement to its petition to deny on February 16, 1971. See note 3, supra. As part of that submission, the petitioner attached affidavits from two representatives of the University of South Florida student government charged with the responsibility of collecting contributions for the Disadvantaged Student Loan Fund. The affiants state that in May of 1970 they were personally informed by the Station WTMP general manager that the money originally collected from "Soul Night",[26] which had been spent, would be replaced and that the station would give $525 to their fund by June 12, 1970. According to the affiants and a former announcer at Station WTMP, none of the money collected (approximately $1,150) was ever donated to any scholarship fund, including the affiants' Disadvantaged Student Loan Fund. It is alleged that the "Soul Night" proceeds were used to repair damage caused by a fire at the station's offices. Petitioner also contends that in mid-1968 Station WTMP defrauded one of its advertisers, James Brown Productions, by airing only $600 worth of the $900 in spot advertising it purchased and by misapplying the remaining $300 to the account of the advertiser's former manager, George Grogan, against whom the station had a disputed claim. According to petitioner, the advertiser inquired at that time concerning the amount of spot announcements presented on its behalf and was informed by the salesman concerned that $900 worth of advertising was broadcast.[27] It is further alleged that this salesman, who subsequently became the general manager at Station WTMP, had earlier been accused by the station's management of improperly withholding money from his station accounts. Affidavits, in support of these contentions, are supplied from the station's former program director-announcer and its former traffic manager.[28]

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[23] According to petitioner, the result of the Senate's vote was first carried by the A.P. newswire at 1:08 p.m.; nearly 1 hour later, Station WOIC reported this event in its regularly scheduled 2 p.m. news program.

[24] By virtue of a single day's monitoring of Station WOIC, petitioner suggests that the sample logs inaccurately portray the station's program service and cannot be relied upon. We disagree. To measure or predict a station's performance on the basis of a single day of operation is not warranted. Moreover, licensees are not required to satisfy their projected programing percentages on a daily or weekly basis. See Tri-Counties Communications, Inc., 31 FCC 2d 83, 22 RR 2d 678 (1971).

[25] While recognizing the right of a broadcaster to exercise his reasonable judgment in terms of his particular situation, the Commission expressed general approval of a commercial policy which specifies a normal commercial content of 18 minutes in each hour with stated exceptions permitting up to 20 minutes per hour during no more than 10 percent of the station's total weekly broadcast hours and with a further exception allowing up to 22 minutes where the excess over 20 minutes is purely political advertising. See Report No. 8842, released Feb. 13, 1970 concerning the WXCL standards.

[26] On July 20, 1968, Station WTMP sponsored this promotion, whose proceeds, after expenses, were to be directed to "the WTMP Scholarship Fund to be divided between Hillsborough, Polk, and Pinellas Counties".

[27] In August 1970, the advertiser requested an accounting of the money it spent at Station WTMP in 1968. By letter of Aug. 18, 1970, a copy of which is submitted by petitioner, the Speidel corporation's comptroller replied that "we are unable to supply the information you request from the station records".

[28] The remaining allegations, which are based on the statements made by three former Station WTMP announcers, largely relate to their terms of employment and rates of compensation while at the station—matters in which the Commission has declined to interfere, absent a clear showing that the licensee's dealings with its employees has contravened law or adversely affected the program service rendered to the public. Here, the required showing has not been proferred. Petitioner's other allegations, which are again based upon the uncontroverted statements of these former employees, do not raise a material and substantial question of impropriety on the part of the station or its management. Significantly, there is no showing that the actions complained of were unreasonable or impermissible. Compare KSID, Inc., 22 FCC 2d 833, 18 RR 2d 1187 (1970); and United Television Co., Inc. (WFAN-TV), supra, 18 FCC 2d at 365-67, 16 RR 2d at 624-28. Further consideration of the foregoing matters does not appear warranted at this time.

22. The licensee does not dispute the allegations raised by Columbia Citizens. Rather, it argues that "[N]one of the allegations is relevant to a resolution of the WOIC renewal application." We disagree. The acts complained of arose in the operation of a broadcast station, whose corporate licensee was controlled by WOIC's principal stockholder.[29] It is well established that serious misconduct in the operation of a broadcast facility reflects upon the basic qualifications of the licensee and its principals and can be considered in other Commission proceedings involving those same persons. *E.g.*, Faulkner Radio, Inc., 15 FCC 2d 780, 15 RR 2d 285 (1968); and Walter T. Gaines (WGAV), 25 FCC 1 387, 17 RR 165 (1958), reconsideration denied 26 FCC 460, 17 RR 185 (1959). Mr. Speidel's awareness of or involvement in these matters is not apparent from the pleadings before us; nor can we determine at this time whether Speidel paid insufficient attention to the operation of Station WTMP or unreasonably delegated his responsibilities and obligations to other station officials. In any event, however, the ultimate responsibility for the alleged wrongdoing of Station WTMP's officers and employees clearly rests upon this major principal. See Star Stations of Indiana, Inc., 19 FCC 2d 991, 993, 17 RR 2d 491, 493–94 (1969); Robert D. and Martha M. Rapp, 12 FCC 2d 703, 13 RR 2d 32 (1968). In view of the seriousness of the questions raised[30] and the licensee's virtual reticence with respect thereto, the Commission is constrained to specify appropriate issues to resolve those questions at a hearing.

Ultimate conclusion. 23. In the judgment of the Commission, substantial and material questions of fact have been raised with respect to the adequacy of the licensee's efforts to ascertain the community needs and interests of the areas served by Station WOIC and the means by which it proposed to meet those needs and interests. The pleadings also raise serious questions concerning misconduct at a station controlled by the licensee's major principal. The Commission is, therefore, unable to make the statutory finding that a grant of the renewal application for Station WOIC is consistent with the public interest, convenience, and necessity, and is of the opinion that the foregoing matters should be explored in an evidentiary hearing.

24. Accordingly, *It is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned license renewal applications, are designated for hearing at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether standard broadcast Station WTMP, while under the ownership and control of Joe Speidel III, engaged in fraudulent billing practices.

(2) To determine, with respect to the aforenoted period, the facts and circumstances surrounding the Station WTMP promotion, "Soul Night", and the use of the proceeds therefrom.

(3) To determine whether, on the basis of the facts adduced in response to the foregoing issues, Joe Speidel III, an officer and principal of the corporate licensees of Stations WTMP and WOIC, participated in or failed to exercise adequate control or supervision over the management and operation of Station WTMP and, if so, whether said actions adversely reflect upon the qualifications of WOIC, Inc., to be a Commission licensee.

(4) To determine the efforts made by WOIC, Inc., to ascertain the community needs and interests of the areas served by Station WOIC and the means by which the licensee proposed to meet those needs and interests during the period the 1969 application was in deferred status (i.e., December 1, 1969 through December 1, 1972).[31]

(5) To determine whether, in light of all the evidence adduced pursuant to the foregoing issues, a grant of the application for renewal of license of Station WOIC would serve the public interest, convenience and necessity.

25. *It is further ordered*, That, the petition to deny and supplement thereto, filed by the Columbia Citizens Concerned with Improved Broadcasting, is dismissed; and that considered as an informal objection filed pursuant to Rule 1.587, the aforementioned petition, is granted to the extent indicated above and is denied in all other respects.

26. *It is further ordered*, That, the motions to expedite consideration of renewal application, filed by WOIC, Inc., are dismissed as moot.

27. *It is further ordered*, That, the Columbia Citizens Concerned with Improved Broadcasting is made a party to the hearing ordered herein.[32]

28. *It is further ordered*, That, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence shall be on the party respondent as to issues (1), (2), and (3). The burden of proceeding with respect to issue (4) and the burden of proof with respect to all of the issues herein shall cember 29, 1972, and published in the be upon WOIC, Inc.

29. *It is further ordered*, That, to avail themselves of the opportunity to be heard, WOIC, Inc., and the party respondent, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, on or before February 21, 1973, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the order.

30. *It is further ordered*, That, WOIC, Inc., shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: January 23, 1973.

Released: February 1, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[33]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-2513 Filed 2-7-73;8:45 am]

[29] At the time of the alleged misconduct, the corporate licensee of Station WTMP was wholly owned by Speidel Broadcasters, Inc., whose 99.45% stockholder was Joe Speidel III. According to the licensee, Speidel, who was the president of the Station WTMP licensee, "is actively engaged in the supervision of each of [his] stations, and visits several of the stations every month." See para. 2, supra.

[30] As we noted in our Memorandum Opinion and Order concerning fraudulent billing practices, "misrepresentations by licensees in any and all billing practices * * * certainly reflects adversely on the qualifications of a licensee and, to a degree, on the industry as a whole. The public interest, convenience and necessity clearly require reasonable ethical business practices in the industry—specifically on the part of individual broadcasters. It is within the Commission's authority, and is its responsibility, to take whatever action is appropriate to check these practices, which essentially amount to the use of broadcast facilities for fraudulent purposes." 23 FCC 2d 70, 71, 19 RR 2d 1506, 1508 (1970). Also see Public Notice, FCC 72-1090, released December 7, 1972. Of similar import is the possible misappropriation of proceeds from "Soul Night" and the resulting deception upon the public.

[31] See note 11, supra.

[32] Several members of Columbia Citizens are purportedly acting in a representative capacity; however, their authority to do so has not been clearly established. Accordingly, we have not named these organizations as parties to the instant hearing. Compare Radio Station WSNT, Inc., supra. Similarly, we have declined to accord party status to the 19 community leaders who, in affidavits attached to petitioner's reply pleading, merely "generally support the allegations made by Petitioners against WOIC [and] believe them to be true". Under these circumstances, we believe the future participation of these individuals and organizations in this hearing should be governed by Rules 1.223 and 1.225.

[33] A concurring statement of Commissioner Benjamin L. Hooks in which Commissioner Nicholas Johnson joins is filed as part of the original document.

FEDERAL POWER COMMISSION

[Dockets Nos. RP72-150, RP72-155]

EL PASO NATURAL GAS CO.

Order Accepting and Allowing Restructured Rates To Become Effective Subject to Hearing and Refund; Correction

JANUARY 24, 1973.

In the order accepting and allowing restructured rates to become effective subject to hearing and refund, issued De-

FEDERAL REGISTER January 8, 1973 (38 FR 1089): In the ordering clause:

Change "El Paso's Substitute Tenth Revised Sheet No. 10 of its FPC Gas Tariff, First Revised Volume No. 3 * * *" to "El Paso's Ninth Revised Sheet No. 3B of its FPC Gas Tariff, Original Volume No. 1 * * *"

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2413 Filed 2-7-73;8:45 am]

[Dockets Nos. CI72-834, CP72-274]

NAVARRO GAS PRODUCTION CO. ET AL.

Notice of Postponement of Hearing

JANUARY 31, 1973.

On January 29, 1973, the Georgia Pacific Corp. requested a postponement of the hearing scheduled by the order issued January 9, 1973, in the above matter. The request states that Staff Counsel, Navarro Gas Production Co. and Mid-Louisiana Gas Co. consented to the request.

Upon consideration, notice is hereby given that the hearing scheduled for February 5, 1973, is postponed to February 15, 1973.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2412 Filed 2-7-73;8:45 am]

[Docket No. CI73-63]

SOUTHERN UNION GATHERING CO.

Notice of Further Extension of Time and Postponement of Hearing Date

JANUARY 30, 1973.

On January 26, 1973, Southern Union Gathering Co. and Aztec Oil and Gas Co. filed a motion for a further extension of the dates established by the order issued September 29, 1972, as amended by notices issued October 10, 1972, November 3, 1972, November 28, 1972, January 4, 1973, in the above-designated matter. The motion states that the New Mexico Public Service Commission has no objection to the motion in view of Aztec's agreement to defer the effective date of its rate increase to April 25, 1973.

Upon consideration, notice is hereby given that the time is further extended to and including March 5, 1973, within which prepared testimony and exhibits shall be filed. The hearing is postponed to March 8, 1973, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2411 Filed 2-7-73;8:45 am]

FEDERAL RESERVE SYSTEM

ALABAMA BANCORPORATION

Order Approving Acquisition of Bank

Alabama Bancorporation, Birmingham, Ala., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire the successor by merger to Bank of Sulligent, Sulligent, Ala. (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of voting shares of Bank. Accordingly, the proposed acquisition is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and none have been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls three banks with deposits of $864.7 million representing about 14 percent of total deposits in commercial banks in Alabama.[1] Acquisition of Bank (deposits of $8.6 million) would only increase minimally Applicant's share of deposits and would not result in a significant increase in the concentration of banking resources in Alabama.

Bank is the second largest of three banks located in Lamar County (the relevant market) and controls about 38 percent of the total deposits in that market. Applicant's closest banking subsidiary to Bank is approximately 95 miles distant and there is no significant existing competition between it and any other banking subsidiaries of Applicant and Bank. Nor is there a reasonable probability of substantial future competition developing between Applicant and Bank due to Alabama's branching laws and the unattractiveness of Lamar County for de novo entry (measured by the comparative ratios of per capita income and population per banking office to Statewide averages). On the basis of the record before it, the Board concludes that competitive considerations relating to the proposed acquisition are consistent with approval of the application.

The financial resources of Applicant and its subsidiary banks are satisfactory with the exception of one subsidiary for which Applicant has agreed to provide additional capital. The managerial resources and future prospects of Applicant and its subsidiary banks are satisfactory, as are the financial and managerial resources and future prospects of Bank. Considerations relating to the convenience and needs of the community to be served lend weight for approval of the application since Applicant plans to introduce trust services and mortgage financing into Lamar County. Applicant also plans to expand Bank's lending and data processing activities. It is the Board's judgment that the proposed transaction is in the public interest and that the application should be approved.

On the basis of the record the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order, or (b) later than 3 months after the effective date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Atlanta, pursuant to delegated authority.

By order of the Board of Governors,[2] effective January 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-2426 Filed 2-7-73;8:45 am]

[1] All banking data are as of June 30, 1972, and reflect bank holding company formations and acquisitions approved by the Board through December 31, 1972.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, Sheehan and Bucher. Absent and not voting: Governor Daane.

BANCOHIO CORP.

Acquisition of Bank

BancOhio Corp., Columbus, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The Peoples National Bank of Greenfield, Greenfield, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 28, 1973.

Board of Governors of the Federal Reserve System, February 1, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2424 Filed 2-7-73;8:45 am]

BARNETT BANKS OF FLORIDA, INC.

Acquisition of Banks

Barnett Banks of Florida, Inc., Jacksonville, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of Florida Southern Bank, Palm Beach County (P.O. Lake Worth), Fla., and Southern Bank of West Palm Beach, West Palm Beach, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve Sys-

tem, Washington, D.C. 20551, to be received not later than February 27, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2425 Filed 2-7-73;8:45 am]

FIDELITY UNION BANCORPORATION

Proposed Acquisition of Suburban Finance Company of Newark

Fidelity Union Bancorporation, Newark, N.J., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Suburban Finance Company of Newark, Newark, N.J. Notice of the application was published on January 10, 1973, in the Newark Star-Ledger, a newspaper circulated in Newark, N.J.

Applicant states that the proposed subsidiary would engage in the activities of making loans in the present maximum amount of $1,000 or less under the provisions of the New Jersey small loan law and making loans secured by second mortgages on residential real estate (up to 4-family occupancy) owned by the borrowers under the New Jersey secondary mortgage loan act and making available to its customers credit life insurance and disability insurance covering the unpaid balance of the loan outstanding. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 1, 1973.

Board of Governors of the Federal Reserve System, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2429 Filed 2-7-73;8:45 am]

GREATER JERSEY BANCORP

Proposed Acquisition of New Jersey Mortgage and Title Co.

Greater Jersey Bancorp, Clifton, N.J., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of the successor by merger to New Jersey Mortgage and Title Co., Passaic, N.J. Notice of the application was published on December 21, 1972, in newspapers of general circulation as follows: The Herold News, Passaic, N.J., and the Patterson News, Patterson, N.J.

Applicant states that the proposed subsidiary would engage in (a) making or acquiring real estate loans for its own account and for the account of others, and (b) servicing real estate loans for its own account and for the account of others. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 1, 1973.

Board of Governors of the Federal Reserve System, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2430 Filed 2-7-73;8:45 am]

INDIAN HEAD BANKS INC.

Order Approving Acquisition of Bank

Indian Head Banks Inc., Nashua, N.H., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire at least 53.68 percent of the voting shares of the Lakeport National Bank of Laconia, Laconia (Post Office Lakeport), N.H. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the largest banking organization in New Hampshire, controls six banks, with aggregate deposits of $180.1 million, representing about 15 percent of the total deposits in commercial banks in New Hampshire.[1] Acquisition of Bank ($8.8 million in deposits) would increase applicant's share of statewide deposits by less than 1 percent and would not result in a significant increase in the concentration of banking resources in the State.

Bank is located in the center of New Hampshire and ranks as the second largest of five commercial banks in the market with approximately 22 percent of deposits (Bank's market is approximated by Belknap County and the town of Moultonboro).[2] Applicant's closest banking subsidiary to Bank is over 40 miles away, and there is little existing significant competition between any of applicant's banking subsidiaries and Bank. Nor is there likely to be significant future competition between any of applicant's banking subsidiaries and Bank due to the distances involved and New Hampshire's branching laws. Applicant could enter Bank's market by establishing a de novo bank. However, this does not seem a reasonable probability in view of the fact that the population per banking office in this area is presently considerably lower than the statewide average and the population growth for the State has substantially exceeded the growth in this area over the last 10 years. Moreover, applicant's acquisition of Bank could have procompetitive effects by permitting Bank to compete more effectively with the largest bank in the area, which controls almost 50 percent of area deposits. Based on the record before it, the Board concludes that competitive considerations of this application are consistent with approval.

The financial condition, managerial resources and future prospects of applicant and its subsidiary banks appear satisfactory. The financial condition, managerial resources and future prospects of Bank also appear favorable in view of the commitment by applicant to provide additional capital and increased management depth for Bank. These factors lend support for approval of the application. Factors relating to the convenience of the community to be served are consistent with approval of the ap-

[1] All banking data are as of June 30, 1972, except where otherwise indicated, and represent bank holding company acquisitions and formations approved by the Board through Dec. 31, 1972.

[2] Banking data for this market are as of June 30, 1970.

plication. It is the Board's judgment that consummation of the proposed acquisition is in the public interest and that the application should be approved.

On the basis of the record the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this order, or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Boston, pursuant to delegated authority.

By order of the Board of Governors,[3] effective February 1, 1973.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.73-2427 Filed 2-7-73;8:45 am]

PERPETUAL CORP. AND PIERCE NATIONAL LIFE INSURANCE CO.

Notice of Request for Determination and Order Providing Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)), by Perpetual Corp. and its wholly owned subsidiary, Pierce National Life Insurance Co., both of Los Angeles, Calif., for a determination that, with respect to the exchange of 63.3 percent of the voting stock of Houston Citizens Bank & Trust Co., Houston, Tex., for 7.1 percent of the voting shares of First International Bancshares, Inc., Dallas, Tex., a multibank holding company, neither Perpetual Corp. nor Pierce National Life Insurance Co. are in fact capable of controlling First International Bancshares, Inc., even though there is a director interlock between the transferor and transferee companies.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

It is ordered, That, pursuant to section 2(g)(3) of the Act, an opportunity be and hereby is provided for filing a request for hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received on or before March 12, 1973. If a request for hearing is filed, such request should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which said person wishes to give testimony at such hearing. The Board subsequently will designate a time and place for any hearing ordered, and will give notice of such hearing to the transferor, the transferees, and all persons who have requested a hearing. In the absence of a request for hearing, the Board will proceed with consideration of the requested determination on the basis of documentary evidence filed in connection with the application.

By order of the Board of Governors, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-2428 Filed 2-7-73;8:45 am]

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

CITIZENS BANK HOLDING CORP.

Formation of One-Bank Holding Company

The Citizens Bank Holding Corp., Drumright, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 97.5 percent of the voting shares of the Citizens Bank, Drumright, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve bank to be received not later than February 21, 1973.

Board of Governors of the Federal Reserve System, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-2433 Filed 2-7-73;8:45 am]

EDGAR, INC.

Formation of One-Bank Holding Company

Edgar, Inc., Omaha, Nebr., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 90 percent or more of the voting shares of Security State Bank, Edgar, Nebr. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve bank to be received not later than February 24, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-2439 Filed 2-7-73;8:45 am]

FIRST NATIONAL CHARTER CORP.

Acquisition of Bank

First National Charter Corporation, Kansas City, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of American Bank of DeSoto, DeSoto, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 1, 1973.

Board of Governors of the Federal Reserve System, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-2431 Filed 2-7-73;8:45 am]

FIRST PENNSYLVANIA CORP.

Proposed Acquisition of Performance Associates, Inc.-Colorado

First Pennsylvania Corp., Philadelphia, Pa., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Performance Associates, Inc.-Colorado, Denver, Colo. Notice of the application was published on November 10, 1972, in the Wall Street Journal and the Denver Post, newspapers circulated in Denver, Colo.

Applicant states that the proposed subsidiary would engage in the activities of providing portfolio investment advisory and portfolio investment management services. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hear-

ing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 27, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2436 Filed 2-7-73;8:45 am]

FIRST SOUTHWEST CORP.

Formation of One-Bank Holding Company

First Southwest Corp., Washington, Pa., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First National Bank & Trust Co., Washington, Pa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(1)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 23, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2435 Filed 2-7-73;8:45 am]

INTEGRITY HOLDING CO.

Formation of One-Bank Holding Company

Integrity Holding Co., Wilmington, Del., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 56 percent of the voting shares of Integrity Finance Corp., Wilmington, Del., and thereby indirectly acquire 38 percent of the voting shares of the First National Bank of Wilmington, Wilmington, Del. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 22, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2438 Filed 2-7-73;8:45 am]

MERCHANTS NATIONAL CORP.

Proposed Acquisition of Circle Leasing Corp.

Merchants National Corp., Indianapolis, Ind., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of the successor by merger to Circle Leasing Corp., Indianapolis, Ind., and indirectly its subsidiaries. Notice of the application was published on November 29, 1972, in The Indianapolis Commercial, a newspaper circulated in Indianapolis, Ind.

Applicant states that the proposed subsidiary would engage in activities related to the leasing of capital goods to businesses and industries. Leasing activities would be conducted with corporations, partnerships, and proprietorships in furnishing goods to be used for business purposes. All equipment would be ordered for customers only upon their special requests. Such activities would be operated on a full pay-out basis during the original term of the lease. Two Indianapolis subsidiaries, Circle Acceptance Corp. and Circle Transportation Corp., would respectively specialize in transactions involving instalment financing, and in full pay-out leasing of vehicles. A third subsidiary, Circle Leasing of Kentucky, Louisville, Ky., would engage in the leasing of capital goods to businesses and industries in Kentucky. Applicant states that all these activities would be consistent with the activities specified by the Board in § 225.4(a)(6) of Regulation Y as permissible for bank holding companies. However, such activities are subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 27, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2440 Filed 2-7-73;8:45 am]

OLD KENT FINANCIAL CORP.

Acquisition of Bank

Old Kent Financial Corp., Grand Rapids, Mich., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to First National Bank of Cadillac, Cadillac, Mich. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 1, 1973.

Board of Governors of the Federal Reserve System, February 2, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2432 Filed 2-7-73;8:45 am]

UNITED TENNESSEE BANCSHARES

Acquisition of Bank

United Tennessee Bancshares, Memphis, Tenn., has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with American National Corp., Chattanooga, Tenn. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 27, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2434 Filed 2-7-73;8:45 am]

ZIONS UTAH BANCORPORATION

Proposed Acquisiton of Fnancial Credit Corporation

Zions Utah Bancorporation, Salt Lake City, Utah, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Financial Credit Corp., Idaho Falls, Idaho. Notice of the application was published on December 21, 1972, in The Post-Register, a newspaper circulated in Idaho Falls, Idaho; on December 22, 1972, in The Blackfoot News, a newspaper published in Blackfoot, Idaho; on December 22, 1972, in Idaho State Journal, a newspaper circulated in Pocatello, Idaho; and on December 21, 1972, in The News-Examiner, a newspaper circulated in Montpelier, Idaho.

Applicant states that the proposed subsidiary would engage in the activities of making consumer installment loans, purchasing consumer installment sales finance contracts, making loans to small businesses, and the financing of dealer inventory. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance wtih the procedures of § 225.4(b). Applicant indicates the proposed subsidiary engages in the sale of credit insurance related to certain extensions of credit. Under certain circumstances specified in the Board's interpretation (12 CFR 225.138) of § 225.4(a)(9) of Regulation Y, such activities may be permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 27, 1973.

Board of Governors of the Federal Reserve System, January 31, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2437 Filed 2-7-73;8:45 am]

POSTAL RATE COMMISSION

[Docket No. MC 73-1]

MAIL CLASSIFICATION SCHEDULE

Notice of Request for a Recommended Decision on Establishment and Providing for Petitions for Leave to Intervene

Publication of Attachment

In the FEDERAL REGISTER of January 30, 1972, the Postal Rate Commission published a notice (FR Doc. 73-1705, 38 FR 2800) which referred in several places to an attachment setting forth proposed Postal Service Mail Classification Schedules. This attachment was filed as part of the original document.

For the benefit of interested persons these proposed Mail Classification Schedules are published in full as follows:

UNITED STATES POSTAL SERVICE DOMESTIC MAIL CLASSIFICATION SCHEDULE

SECTION 100 FIRST-CLASS MAIL

SECTION 100.1 *Definition.* (a) First-class mail consists of (1) matter (including post cards and postal cards) wholly or partially in writing or typewriting, except as provided in sections 200.2, 300.1, 400.2, 400.5, and 400.6 of this schedule, (2) bills and statements of account, and (3) matter closed against postal inspection.

(b) Postal cards are cards supplied by the Postal Service with postage printed or impressed on them for the transmission of communications.

(c) Post cards are mailing cards, other than postal cards, of approximately the same form, quality and weight as postal cards.

SEC. 100.2 *Size and weight limits.* The maximum size of first-class mail is 100 inches in length and girth combined and the maximum weight is 70 pounds.

SEC. 100.3 *Rates.* (a) Except as otherwise provided in this section, the rate of postage, computed separately for each letter or piece, for first-class mail weighing 12 ounces or less is 8 cents for each ounce or fraction of an ounce, subject to an additional rate of 5 cents on and after _____ for each piece which weighs one ounce or less, and either exceeds any of the following limitations:

Height	6⅛ inches.
Length	11½ inches.
Thickness	¼ inch.

or has a height-to-length ratio which does not fall between 1:1.3 and 1:2.5, both inclusive.

(b) First-class mail weighing more than 12 ounces shall be mailed at the rates of postage established by section 101.3(c).

(c) The rate of postage for each single or double post or postal card is 6 cents, but the rate of postage for mailing cards larger than 4¼ inches in height or 6 inches in length is the rate provided in subsections (a) or (b) of this section, as applicable.

(d) The rates set forth in subsections (a), (b), and (c) of this section shall be reduced by ½ cent per piece for mailings of 1,000 or more ZIP coded and presorted pieces.

SECTION 101. AIRMAIL AND PRIORITY MAIL

SECTION 101.1 *Definition.* (a) "Airmail" means matter, weighing 9 ounces or less, mailed for transportation by air.

(b) "Priority mail" means (1) first-class mail weighing more than 12 ounces, and (2) other mail weighing more than 9 ounces which is mailed to obtain the most expeditious handling and transportation practicable.

SEC. 101.2 *Size and weight limits.* The maximum size of airmail and priority mail is 100 inches in length and girth combined and, except as provided in section 101.1(a), the maximum weight is 70 pounds.

SEC. 101.3 *Rates.* (a) Except as provided in subsection (b) of this section, the rate of postage for each letter or piece of airmail weighing not more than 9 ounces is 11 cents for each ounce or fraction thereof, subject, however, to the additional-rate provisions of section 100.3(a).

(b) The rate of postage for each single or double post or postal card sent as airmail is 9 cents, except that for mailing cards larger than 4¼ inches in height or 6 inches in length the rate of postage is the rate provided in subsections (a) or (c), as applicable.

(c) Except as provided in subsection (d), the rates of postage for priority mail are based on the zones described in, and subject to the provisions of, section 400.3, in accordance with the following table:

Postage rate unit (pounds)	Rates (dollars)					
	Zones					
	Local, 1, 2, and 3	4	5	6	7	8
1	1.00	1.00	1.00	1.00	1.00	1.00
1.5	1.20	1.22	1.25	1.30	1.40	1.50
2	1.40	1.43	1.51	1.60	1.63	1.77
2.5	1.60	1.65	1.76	1.90	2.02	2.10
3	1.80	1.86	2.01	2.20	2.36	2.54
3.5	2.00	2.08	2.26	2.49	2.69	2.93
4	2.20	2.30	2.52	2.79	3.03	3.31
4.5	2.40	2.51	2.77	3.09	3.37	3.70
5	2.60	2.73	3.02	3.39	3.71	4.08
Each additional pound	0.48	0.50	0.50	0.64	0.72	0.80

EXCEPTION: Parcels weighing less than 10 pounds which are over 84 inches but not over 100 inches in length and girth combined are chargeable with a minimum rate equal to that for a 10-pound parcel for the zone to which addressed.

(d) The rate of postage for priority mail transported directly between (1) Hawaii, Alaska, or the possessions or territories of the United States in the Pacific area, including the Trust Territory of the Pacific Islands, and (2) an Army, Air Force, or Fleet post office served by the postmaster at San Francisco, Calif., or Seattle, Wash., shall be the rate which would be applicable if such mail were in fact mailed from or delivered to either said city.

(e) The rates set forth in subsections (a), (b), and (c) of this section shall be reduced by ½-cent per piece for mailings of 1,000 or more ZIP coded and presorted pieces.

SECTION 102. BUSINESS REPLY MAIL

SECTION 102.1 *Definition.* Business reply mail consists of cards, envelopes, cartons and labels distributed under a permit and mailed without prepayment of postage. Such mail may be sent as either first-class mail or airmail.

SEC. 102.2 *Rates.* The rate of postage for business reply mail is the applicable rate—either first-class or airmail—together with an additional charge thereon as set forth in the table below:

Monthly volume	*Monthly fee schedule*
Up to 25,000 pieces	5¢ each piece.
25,001 to 50,000 pieces	3¢ each piece of total volume, plus $500.
Over 50,000 pieces	2¢ each piece of total volume, plus $1,000

SECTION 200. SECOND-CLASS MAIL

SECTION 200.1 *Definition.* (a) Second-class mail consists of properly prepared newspapers and other periodical publications (hereinafter "publications") entered as second-class mail in accordance with section 200.3 which (1) are regularly issued at stated intervals at least four times a year, bear a date of issue, and are numbered consecutively;

(2) are issued from a known office of publication;

(3) are formed of printed sheets, the word "printed" not including reproduction by the stencil, mimeograph, or hectograph process;

(4) are originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or a special industry;

(5) have a legitimate list of subscribers;

(6) do not have more than 75 percent advertising in more than half of their issues during any 12-month period, provided that transportation schedules, fares and related information solely for the publication of which a charge is made are not considered advertising for purposes of this requirement; and

(7) are not designed primarily for advertising purposes or for circulation either free or at nominal rates, provided however, that a publication may qualify as second-class mail if it meets the criteria of subsections (b), (c) or (d) of this section.

(b) Publications meeting conditions (1), (2), (3), and (6) of subsection (a) of this section may be entered and mailed as second-class mail if they do not contain advertising other than that of the publisher and if they are:

(1) Published by a regularly incorporated institution of learning; or

(2) Published by a regularly established State institution of learning supported in whole or in part by public taxation; or;

(3) A bulletin issued by a State board of health, or a State industrial development agency; or

(4) A bulletin issued by a State conservation or fish and game agency or department; or

(5) A bulletin issued by a State board or department of public charities and corrections; or

(6) Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons; or

(7) Published by or under the auspices of a trade union; or

(8) Published by a strictly professional, literary, historical, or scientific society; or

(9) Published by a church or church organization; or

(10) Published by any public or nonprofit private elementary or secondary institution of learning or its administrative or governing body; or

(11) Program announcements or guides published by an educational radio or television agency of a State or political subdivision thereof or by a nonprofit educational radio or television station.

(c) A publication containing advertising of persons other than the publisher but otherwise qualifying under items (6) through (9) of subsection (b) of this section may be entered and mailed as second-class mail if:

(1) The publication is not designed or published primarily for advertising purposes;

(2) The publication is originated and published to further the objects and purposes of the publisher;

(3) Not more than 10 percent of the circulation consists of sample copies and the balance of the circulation is limited to copies sent (i) to members who pay either as a part of their dues or assessments, or otherwise, not less than 50 percent of the regular subscription price, (ii) to other actual subscribers, and (iii) to exchanges.

(d) A publication issued by a State department of agriculture may be entered and mailed as second-class mail if it—

(1) Is issued from a known place of publication;

(2) Is issued at stated intervals at least four times a year;

(3) Is published only for the purpose of furthering the objects of the department; and

(4) Does not contain advertising matter.

SEC. 200.2 *Permissible marks, enclosures and supplements.* (a) Second-class mail may contain no writing, print, or sign thereon or therein, in addition to the original print, except—

(1) The name and address of the person to whom the mail is sent and directions for transmission, delivery, forwarding or return;

(2) Subscription index figures either printed or written;

(3) The printed title of the publication and the place of its publication;

(4) The printed or written name and address without addition of advertisement of the publisher or sender, or both;

(5) Written or printed words or figures, or both, indicating the date on which the subscription to the matter will end;

(6) The correction of typographical errors;

(7) A mark except written or printed words to designate a word or passage to which it is desired to call attention;

(8) The words "sample copy" when the matter is sent as such;

(9) The words "marked copy" when the matter contains a marked item or article; and

(10) Messages and notices of a civic or public-service nature on the envelope, wrapper, or other cover in which copies of publications are mailed, if no charge is made for the inclusion of such messages and notices.

(b) Publishers and news agents may enclose in their publications receipts and orders for subscriptions.

(c) This section does not prohibit the insertion in publications of advertisements permanently attached thereto.

(d) Publishers may fold a supplement within the regular issue of a publication if the supplement is—

(1) Germane to the publication;

(2) Needed to supply matter omitted from the regular issue for want of space, time or greater convenience; and

(3) Issued with the regular issue.

(e) Editorial or other reading matter contained in publications, for the publication of which a valuable consideration is paid, accepted or promised, shall be marked plainly "advertisement" by the publisher.

SEC. 200.3 *Entry.*

Prior to mailing at the rates prescribed in section 200.4, publications qualifying as second-class mail under section 200.1 shall apply for and be granted second-class entry at the post office where the office of publication is maintained, which shall be the office of original entry, and may be granted additional entry at other post offices.

SEC. 200.4 *Rates.*

SEC. 200.41 *Regular rates.* (a) Except as provided in sections 200.42 and 200.43, the rates of postage set out in this section are applicable to copies of publications (1) if mailed by the publisher thereof from any post office where entry is authorized or (2) if mailed by registered news agents to actual subscribers thereto or to other news agents for the purpose of sale and (3) if sample copies, but only to the extent of 10 percent of the weight of copies mailed to subscribers during the calendar year.

(b) Except as otherwise provided in this section and section 200.43, the rates of postage on publications mailed in accordance with subsection (a) are as follows: [2]

Per pound:	*Rate (cents)*
Nonadvertising portion	7.2.
Advertising portion:	
Zone:	
1 and 2	9.1.
3	9.8.
4	11.0.
5	12.8.
6	14.7.
7	16.8.
8	19.0.
Minimum per piece	1.3 (0.8 if fewer than 5,000 copies mailed outside county):
Additional per piece	1.6 (0.9 if fewer than 5,000 copies mailed outside county).

(c) For the purpose of this section and section 200.43 the portion of a publication devoted to advertisements shall include all advertisements inserted in the publication and attached permanently thereto, or permitted by section 200.2(b).

(d) As used in this section the term "zones" means the eight zones described in section 400.3(a)-(c).

SEC. 200.42 *Transient rates.* The rate of postage for copies of publications mailed—

(1) By persons other than the publishers or registered news agents;

(2) As sample copies by the publishers in excess of the 10 percent permitted to be mailed at the rates prescribed in sections 200.41(b) and 200.43; and

(3) By the publishers to persons who may not be included in the required legitimate list of subscribers:

is 6 cents for the first 2 ounces and 2 cents for each additional ounce or fraction thereof. When postage at the rates prescribed for fourth-class mail is lower, the latter applies. The rates are computed on each individually addressed copy or package of unaddressed copies.

SEC. 200.43 *Preferred rates.* (a) Except as provided in subsection (b), the rates of postage for publications mailed in and addressed for delivery within the county in which they are published and have original entry are as follows: [1]

	Cents
Per pound	1.5
Minimum per piece	0.2
Additional per piece	1.0

(b) The rates of postage for publications mailed within the county in which they are published and have original entry, for delivery within that county by letter carrier out of the office of mailing, are [1]—

(1) if issued more frequently than weekly, 2.1 cents a copy;

(2) if issued less frequently than weekly—

(A) weighing 2 ounces or less, 2.1 cents a copy.

(B) weighing more than 2 ounces, 3.1 cents a copy.

(c) The rates of postage for publications mailed for delivery by letter carrier out of a different post office, the delivery limits of which include the location of the headquarters or general business office of the publisher, are—

(1) the rates that would be applicable if mailed at that post office, or

[2] Phased rates, where applicable, are set forth in Appendix A.

[1] Phased rates, where applicable, are set forth in Appendix B.

(2) the rates from the office of mailing if those rates are higher.

(d) (1) Except as provided in paragraph (2), the rates of postage for publications of qualified nonprofit organizations mailed in accordance with section 200.41(a) are as follows: [2]

Per pound:	Rate (cents)
Nonadvertising portion	5.0
Advertising portion:	
Zone:	
1 and 2	7.8
3	8.5
4	9.7
5	11.5
6	13.4
7	15.5
8	17.7
Minimum per piece	0.2
Additional per piece	1.5

(2) The postage on an issue of a publication referred to in paragraph (1), the advertising portion of which does not exceed 10 percent of such issue, shall be computed without regard to the rates applicable to the advertising portion prescribed in such paragraph.

(e) The rates of postage on classroom publications, mailed in accordance with section 200.41(a), are as follows:[3]

Per pound:	Rates (cents)
Non advertising portion	5.0
Advertising portion:	
Zone:	
1 and 2	7.8
3	8.5
4	9.7
5	11.5
6	13.4
7	15.5
8	17.7
Minimum per piece	0.8
Additional per piece	1.4

(f) The postage is 7.8 cents per pound [4] on the advertising portion of publications devoted to promoting the science of agriculture which are mailed for delivery in zones 1 and 2 in accordance with section 200.41(a) if the total number of copies of the publications furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.[5]

(g) For the purpose of the application of this section with respect to each publication having original entry at an independent incorporated city, an incorporated city which is situated entirely within a county, or which is contiguous to one or more counties in the same State, but which is politically independent of such county or counties, shall be considered to be within and a part of the county with which it is principally contiguous.

(h) As used in this section—

(1) "classroom publication" means a religious, educational, or scientific publication designed specifically for use in classrooms or in religious instruction classes;

(2) "a publication of a qualified nonprofit organization" means (i) a publication published by and in the interest of one of the following types of organizations or associations if it is not organized for profit and none of its net income inures to the benefit of any private stockholder or individual: Religious, educational, scientific, philanthropic, agricultural, labor, veterans', fraternal, and associations of rural electric cooperatives; (ii) program announcements or guides published by an educational radio or television agency of a State or political subdivision thereof or by a nonprofit educational radio or television station; and (iii) not to exceed one publication published by the official highway or development agency of a State which meets all of the requirements of section 200.1(a) and which contains no advertising;

(3) "zones" means the eight zones described in section 400.3(a)–(c).

SECTION 201. CONTROLLED CIRCULATION PUBLICATIONS

SEC. 201.1 *Definition.* Controlled circulation publications are those publications, holding a permit, which—

(1) contain 24 pages or more;

(2) are issued at regular intervals four or more times a year;

(3) devote 25 percent or more of their pages to text or reading matter and not more than 75 percent to advertising matter;

(4) may be circulated free or mainly free; and

(5) are not owned and controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them.

SEC. 201.2 *Rates.*[1] The rates of postage for properly prepared controlled circulation publications when mailed by the publisher at any post office where a permit is held are as follows:

	Cents
Per pound	15
Minimum per piece	5

SECTION 300. THIRD-CLASS MAIL

SECTION 300.1 *Definition.* (a) Third-class mail consists of matter, weighing less than sixteen ounces, which is not mailed or required to be mailed as first-class mail and not entered as second-class mail.

(b) Printed matter, i.e., matter inscribed with marks (including words, figures and images) that have been reproduced by any process other than handwriting or typewriting, which does not have the character of actual and personal correspondence, and which is being sent in identical terms to several persons, may be mailed as third-class mail.

(c) Third-class mail does not lose its character as such if its marks, enclosures or contents include the date and one or more of the items listed in section 400.2.

SEC. 300.2 *Rates.*[1] (a) The single-piece rate for third-class mail is 8 cents for the first 2 ounces and 4 cents for each additional ounce or fraction of an ounce.

(b) Properly prepared third-class mail pieces, separately addressed and identical in size and weight, contained in mailings weighing not less than 50 pounds or consisting of 200 pieces or more may be mailed at the bulk rates specified in this subsection. The applicable bulk rate is (i) the rate for each pound or fraction of a pound or (ii) the minimum-per-piece rate, whichever is higher.

(1) The regular rate is 22 cents per pound and the nonprofit rate is 11 cents per pound for books and catalogs of 24 or more pages, seeds, cuttings, bulbs, roots, scions, and plants.

(2) The regular rate is 26 cents per pound and the nonprofit rate is 13 cents per pound for matter other than that listed in subsection (b)(1) of this section.

(3) The regular minimum-per-piece rate for the first 250,000 pieces mailed annually by or on behalf of a person is 4.8 cents and the minimum-per-piece rate for pieces in addition to the first 250,000 is 5 cents per piece. Calculation of the number of pieces shall include pieces mailed under subsections (b)(1) and (b)(2) of this section.

(4) The nonprofit minimum-per-piece rate is 2.1 cents.

(c) The nonprofit rate is available only to religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations that are not organized for profit and have no net income which inures to the benefit of any private stockholder or individual.

(d) An additional rate of 4 cents per piece in addition to the rates specified in subsection (a) of this section shall be applicable to single-piece third-class mail weighing not more than 2 ounces under the additional-rate provisions of section 100.3(a).

(e) Third-class mail may be mailed at the lower rates provided in section 400.5 or section 400.6 if it would qualify for those rates for its failure to weigh 16 ounces or more.

SECTION 301. KEYS AND OTHER SMALL ARTICLES

The postage is 14 cents for the first 2 ounces or portion thereof and 8 cents for each additional 2 ounces or portion thereof for keys, identification cards, tags or similar identification objects or specified small articles, deposited in the mails without prepayment of postage and bearing (1) a request that they be returned to a properly noted complete address and (2) a guarantee that the postage due thereon will be paid on delivery.

SECTION 400. FOURTH-CLASS MAIL

SECTION 400.1 *Definition.* Fourth-class mail consists of matter—

(1) Not mailed or required to be mailed as first-class mail;

(2) Weighing 16 ounces or more; and

(3) Not entered as second-class mail (except as provided in section 200.42).

SEC. 400.2 *Permissible marks and enclosures.* (a) The sender may not place on or enclose in fourth-class mail marks that have the character of personal correspondence, but the following marks and enclosures may be placed on or in fourth-class mail when space is left on the address side sufficient for a legible address and necessary postage or indicia—

(1) The sender's addressee's name, occupation and address, preceded by the word "from" or "to" and directions for transmission, delivery, forwarding or return;

(2) Marks other than by written or printed words to call attention to words or passages in the text;

(3) Correction of typographical errors;

(4) A simple manuscript dedication or inscription not of the nature of personal correspondence on the blank leaves or cover of a book or other printed matter;

(5) Matter mailable as third-class mail printed on the wrapper, envelope, tag or label;

(6) Marks, numbers, names or letters for the purpose of description printed or written on the wrapper or cover;

(7) The words "Please Do Not Open Until Christmas" or words of similar import on the package, wrapper or envelope, enclosing the same or on a tag or label attached thereto;

(8) Corrections on proof sheets;

(9) Manuscript accompanying proof sheets; and

(10) An invoice, whether or not also serving as a bill, if it relates solely to the matter with which it is mailed.

[2] Phased rates, where applicable, are set forth in Appendix C.

[3] Phased rates, where applicable, are set forth in Appendix D.

(§ 200.43 cont'd)

[4] Phased rates, where applicable, are set forth in Appendix A.

[5] With this exception, all regular rates provided in section 200.41(b) apply to these publications.

[1] Phased rates, where applicable, are set forth in Appendix E.

[1] Phased rates, where applicable, are set forth in Appendix F.

(b) There may be enclosed with, attached to or endorsed upon fourth-class mail, either in writing or otherwise, the instructions and directions for the use thereof.

SEC. 400.3 *Postal zones.* (a) For postal zone purposes, the distances between sectional center facilities or multi-ZIP coded post offices are measured by units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude.

(b) The units of area are the basis of eight postal zones, as follows:

(1) The first zone includes all territory within the quadrangle in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area.

(2) The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

(3) The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

(4) The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius of approximately 600 miles from the center of a given unit of area.

(5) The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

(6) The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

(7) The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

(8) The eighth zone includes all units of area outside the seventh zone.

(c) The Postal Service shall use units of area containing postal sectional center facilities or multi-ZIP coded post offices as the basis of a postal zone as described in subsection (b) of this section. The zone shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this sentence shall not cause two post offices to be regarded as within the same local zone.

(d) In addition to the eight zones described in subsections (b) and (c) of this section, there is a local zone for which local rates apply.

(e) For articles mailed between Postal Service facilities, including Armed Forces post offices, wherever located, the rates according to zone apply, except that the rates of postage for mail transported between the United States, the Canal Zone, Puerto Rico, or the possessions or territories of the United States, including the Trust Territory of the Pacific Islands, on the one hand, and Army, Air Force, and Fleet post offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet post office concerned.

SEC. 400.4 *Parcel post.*

SEC. 400.41 *Parcel post rates.* (a) All fourth-class mail may be mailed as parcel post. Except as otherwise provided in this section, the rates of postage for parcel post are based on the zones described in section 400.3 in accordance with the following table:

Weight	Zones							
1 pound and not exceeding—	Local	1 and 2	3	4	5	6	7	8
POUNDS								
2	$0.60	$0.65	$0.70	$0.75	$0.80	$0.90	$1.00	$1.05
3	.60	.75	.80	.85	.95	1.10	1.30	1.35
4	.65	.80	.85	.95	1.10	1.30	1.40	1.60
5	.70	.85	.90	1.05	1.20	1.45	1.65	1.90
6	.70	.95	1.00	1.15	1.35	1.60	1.85	2.10
7	.75	1.05	1.10	1.25	1.50	1.75	2.10	2.25
8	.75	1.10	1.15	1.35	1.60	1.90	2.50	2.60
9	.80	1.15	1.20	1.45	1.75	2.05	2.45	2.85
10	.80	1.20	1.30	1.55	1.90	2.20	2.65	3.10
11	.80	1.25	1.35	1.60	2.00	2.30	2.85	3.25
12	.85	1.30	1.45	1.70	2.10	2.45	3.05	3.55
13	.85	1.35	1.55	1.80	2.20	2.60	3.25	3.80
14	.90	1.40	1.60	1.90	2.35	2.75	3.45	4.00
15	.90	1.45	1.65	2.00	2.45	2.85	3.60	4.20
16	.95	1.55	1.75	2.05	2.55	2.95	3.80	4.40
17	1.00	1.60	1.80	2.15	2.65	3.10	3.95	4.60
18	1.00	1.65	1.90	2.20	2.75	3.20	4.15	4.80
19	1.05	1.70	2.00	2.30	2.85	3.35	4.30	5.00
20	1.05	1.75	2.05	2.40	2.95	3.50	4.50	5.20
21	1.10	1.85	2.10	2.45	3.05	3.65	4.65	5.40
22	1.15	1.90	2.15	2.55	3.15	3.75	4.85	5.60
23	1.15	1.95	2.20	2.60	3.25	3.90	5.00	5.80
24	1.20	2.00	2.25	2.65	3.35	4.05	5.15	6.00
25	1.20	2.05	2.30	2.75	3.45	4.15	5.35	6.20
26	1.20	2.10	2.35	2.85	3.55	4.30	5.50	6.40
27	1.25	2.15	2.40	2.90	3.70	4.45	5.65	6.60
28	1.25	2.20	2.45	2.95	3.80	4.60	5.80	6.80
29	1.30	2.25	2.50	3.05	3.90	4.70	5.95	7.00
30	1.30	2.30	2.55	3.10	4.00	4.85	6.10	7.20
31	1.35	2.35	2.65	3.20	4.10	5.00	6.25	7.40
32	1.40	2.40	2.70	3.30	4.20	5.15	6.45	7.60
33	1.40	2.45	2.75	3.35	4.30	5.25	6.60	7.80
34	1.45	2.50	2.80	3.40	4.40	5.40	6.75	8.00
35	1.45	2.55	2.85	3.45	4.50	5.55	6.90	8.20
36	1.45	2.60	2.90	3.55	4.60	5.65	7.10	8.40
37	1.50	2.65	3.00	3.65	4.70	5.75	7.25	8.60
38	1.50	2.70	3.05	3.70	4.80	5.90	7.45	8.80
39	1.55	2.75	3.10	3.80	4.90	6.05	7.60	9.00
40	1.55	2.80	3.15	3.85	5.00	6.15	7.75	9.20
41	1.60	2.85	3.20	3.95	5.15	6.25	7.95	9.40
42	1.65	2.90	3.25	4.00	5.25	6.40	8.10	9.60
43	1.65	2.95	3.30	4.10	5.35	6.55	8.25	9.80
44	1.70	3.00	3.35	4.15	5.45	6.65	8.40	10.00
45	1.70	3.05	3.40	4.20	5.55	6.80	8.55	10.20
46	1.70	3.10	3.50	4.30	5.65	6.90	8.70	10.40
47	1.75	3.10	3.55	4.40	5.75	7.00	8.90	10.60
48	1.75	3.15	3.60	4.45	5.85	7.15	9.05	10.80
49	1.80	3.20	3.65	4.50	5.95	7.30	9.20	11.00
50	1.80	3.25	3.70	4.60	6.05	7.40	9.35	11.15
51	1.85	3.30	3.80	4.70	6.15	7.50	9.50	11.35
52	1.90	3.35	3.85	4.75	6.25	7.65	9.65	11.55
53	1.90	3.40	3.90	4.80	6.35	7.80	9.80	11.75
54	1.95	3.40	3.95	4.90	6.45	7.90	9.95	11.90
55	1.95	3.45	4.00	4.95	6.55	8.00	10.10	12.10
56	1.95	3.50	4.10	5.05	6.60	8.10	10.25	12.25
57	2.00	3.55	4.15	5.15	6.70	8.25	10.40	12.45
58	2.00	3.60	4.20	5.20	6.80	8.40	10.55	12.60
59	2.05	3.65	4.25	5.25	6.90	8.50	10.70	12.80
60	2.05	3.65	4.30	5.35	7.00	8.60	10.85	12.95
61	2.10	3.70	4.35	5.45	7.05	8.70	11.00	13.10
62	2.15	3.70	4.40	5.50	7.15	8.85	11.15	13.30
63	2.15	3.75	4.45	5.55	7.25	9.00	11.30	13.45
64	2.20	3.80	4.50	5.60	7.35	9.10	11.45	13.65
65	2.20	3.85	4.60	5.70	7.45	9.20	11.60	13.80
66	2.20	3.90	4.65	5.80	7.50	9.30	11.75	13.95
67	2.25	3.95	4.70	5.85	7.60	9.40	11.85	14.15
68	2.25	3.95	4.75	5.90	7.70	9.55	12.00	14.30
69	2.30	4.00	4.80	5.95	7.75	9.65	12.15	14.55
70	2.30	4.05	4.85	6.05	7.85	9.75	12.25	14.60

(b) Parcels weighing less than 10 pounds and measuring more than 84 inches but not more than 100 inches in length and girth combined are subject to a minimum postage rate equal to the postage rate for a 10-pound parcel for the zone to which the parcel is addressed.

(c) The postage rate on gold mailed within Alaska or from Alaska to other States, the Canal Zone, Puerto Rico, or the possessions or territories of the United States, including the Trust Territory of the Pacific Islands, is 2 cents for each ounce or fraction thereof regardless of zones.

SEC. 400.42 *Bulk parcel post rates.* (a) 500 or more properly prepared pieces of mail qualifying as bulk parcel post may be mailed at bulk parcel post rates, except that parcels subject to the provisions of section 400.4 (b) and (c) may not be so mailed.

(b) The rates for bulk parcel post are as follows:

Parcel post zone	Rate in cents	
	Per piece	Per pound
Local	57	2.5
1 and 2	59	6.2
3	60	7.5
4	62	9.6
5	64	13.0
6	68	16.0
7	72	20.6
8	76	24.6

NOTE: The total charge for each bulk mailing shall be the sum of the charges derived by applying the applicable pound rate to the total number of pounds and by applying the applicable piece rate to the total number of pieces.

SEC. 400.5 *Special-rate fourth-class rates.* (a) The following fourth-class matter may be mailed as special-rate fourth-class mail:

(1) Books, including books issued to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books;

(2) 16-millimeter or narrower width films and catalogs of such films, except when sent to or from commercial theaters;

(3) printed music, whether in bound form or in sheet form;

(4) printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests, and other mental and personal qualities with or without answer, test scores or identifying information recorded thereon in writing or by mark;

(5) sound recordings, including incidental announcements of recordings, and guides or scripts prepared solely for use with such recordings;

(6) playscripts and manuscripts for books, periodicals and music;

(7) printed educational reference charts, permanently processed for preservation; and

(8) looseleaf pages and binders thereof, consisting of medical information for distribution to doctors, hospitals, medical schools and medical students.

(b) The rate of postage for each piece of special-rate fourth-class mail which is not prepared for mailing in accordance with subsection (c) or (d) of this section is 22 cents for the first pound or fraction thereof and 11 cents for each additional pound or fraction thereof.[1]

(c) The rate of postage for special-rate fourth-class mail contained in a qualified mailing

(1) which consists of 2,000 or more pieces of mail separated to 3 digit ZIP code and State levels and

(2) in which each piece of mail weighs 30 pounds or less is the rate of postage according to subsection (b) of this section, reduced by 10 percent.

(d) The rate of postage for special-rate fourth-class mail contained in a qualified mailing—

(1) which consists of 500 or more pieces of mail separated to 5 digit ZIP code levels and

(2) in which each piece of mail weighs 30 pounds or less is the rate of postage according to subsection (b) of this section, reduced by 15 percent.

SEC. 400.6 *Library-rate fourth-class rates.* (a) Matter designated in subsection (b) of this section may be mailed at the rate of 10 cents for the first pound or fraction thereof and 5 cents for each additional pound or fraction thereof[2] when loaned or exchanged (including cooperative processing by libraries) between—

(1) Schools, colleges or universities;

(2) Public libraries, museums and herbaria, religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, not organized for profit and more of the net income of which inures to the benefit of any private stockholder or individual, or between such organizations and their members, readers or borrowers.

(b) The materials mailable under the rates prescribed in subsection (a) of this section are—

(1) Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising matter other than incidental announcements of books;

(2) printed music, whether in bound form or in sheet form;

(3) bound volumes of academic theses in typewritten or other duplicated form;

(4) periodicals, whether bound or unbound;

(5) sound recordings;

(6) other library materials in printed, duplicated, or photographic form or in the form of unpublished manuscripts; and

(7) museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the education work and interests of museums and herbaria.

(c) 16-millimeter or narrower width films, filmstrips, transparencies for projection, slides, microfilms, sound recordings, museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria, scientific or mathematical kits, instruments or other devices and catalogs of those items and guides or scripts prepared solely for use with such materials may be mailed at the rates prescribed in subsection (a) of this section when sent to or from the institutions, organizations or associations listed in paragraphs (1) and (2) of subsection (a).

(d) An organization or association is not entitled to preferential rates under this section if any portion of its net income inures to the benefit of any private stockholder or individual.

SEC. 400.7 *Bound printed matter rates.* (a) For the purposes of this section, "bound printed matter" is printed matter having 24 or more pages, at least 22 of which are printed, which:

(1) weighs not less than 16 ounces nor more than 10 pounds;

(2) consists primarily of reading or advertising material;

(3) is securely bound by permanent fastening;

(4) is imprinted with words, letters, characters, figures or images by any process other than handwriting or typewriting;

(5) does not have the nature of personal correspondence;

(6) is not a book, within the meaning of section 400.5(a)(1);

(7) is not a book, including a book issued to supplement another book, consisting of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing advertising matter, other than incidental announcements of books, which either (i) is not permanently bound in the book itself or (ii) does not form an integral part of the book itself.

(b) The rates of postage for bound printed matter are based on the zones described in section 400.3 in accordance with the following table:

Weight (pounds)	Zones							
	Local	1 and 2	3	4	5	6	7	8
To:	(cents)	(cents)	(cents)	(cents)	(cents)	(cents)	(cents)	(cents)
1.5	28	34	34	36	38	40	43	46
2	29	35	36	38	41	43	47	51
2.5	30	37	38	41	44	47	51	56
3	31	39	40	43	47	51	56	62
3.5	32	40	42	46	50	55	60	67
4	33	42	44	48	53	58	65	73
4.5	34	44	46	51	56	62	69	78
5	35	45	48	53	59	66	74	83
6	37	49	52	58	65	73	83	94
7	39	52	56	63	71	81	92	105
8	41	56	60	68	77	88	101	116
9	43	59	64	73	83	96	110	127
10	45	62	68	78	89	103	119	137

(c) The rates of postage for qualified mailings of 300 or more individually addressed pieces of bound printed matter are based on the zones described in section 400.3, in accordance with the following table:

Zones	Piece rate	Bulk pound rate	Zones	Piece rate	Bulk pound rate
	(cents)	(cents)		(cents)	(cents)
Local	21	2.1	5	25	6.1
1 and 2	25	3.4	6	25	7.5
3	25	4.0	7	25	9.1
4	25	5.0	8	26	10.8

NOTE: The total charge for each bulk mailing shall be the sum of the charges derived by applying the applicable pound rate to the total number of pounds and by applying the applicable piece rate to the total number of pieces.

[1] Phased rates, where applicable, are set forth in Appendix G.

[2] Phased rates, where applicable, are set forth in Appendix H.

APPENDIX A

SECOND-CLASS PHASED RATES: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

(Including Science of Agriculture)

Postage rate unit	Phased rates (cents)									
	Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
Per-pound:										
Nonadvertising portion	4.2	4.9	5.7	6.4	7.2					
Advertising portion:										
Zone:										
1 and 2	6.0	6.8	7.5	8.3	9.1					
1 and 2 [1]	4.6	4.9	5.3	5.6	6.0	6.4	6.7	7.1	7.4	7.8
3	7.1	7.8	8.4	9.1	9.8					
4	9.2	9.7	10.1	10.6	11.0					
5	11.4	11.8	12.1	12.5	12.8					
6	13.8	14.0	14.3	14.5	14.7					
7	15.0	15.4	15.9	16.3	16.8					
8	17.4	17.8	18.2	18.6	19.0					
Minimum-per-piece [2]	1.3	1.3	1.3	1.3	1.3					
Minimum-per-piece [3]	0.8	0.8	0.8	0.8	0.8					
Per-piece [2]	0.3	0.6	1.0	1.3	1.6					
Per-piece [3]	0.1	0.2	0.3	0.4	0.5	0.5	0.6	0.7	0.8	0.9

[1] Science of agriculture publications.
[2] Publications mailing 5,000 or more copies per issue outside county of publication.
[3] Publications mailing fewer than 5,000 copies per issue outside county of publication.

APPENDIX B

SECOND-CLASS PHASED RATES: IN-COUNTY

Rate category	Phased rates (cents)									
	Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
Pound-rate matter:										
Per-pound	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
Minimum-per-piece	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Per-piece	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0
Per-copy-rate matter:										
Issued more frequently than weekly	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.0	2.1
Issued less frequently than weekly:										
Copies weighing 2 ounces or less	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.0	2.1
Copies weighing more than 2 ounces	2.1	2.2	2.3	2.4	2.6	2.7	2.8	2.9	3.0	3.1

APPENDIX C

SECOND-CLASS PHASED RATES: PUBLICATIONS OF QUALIFIED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

	Phased rates (cents)									
	Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
Per-pound:										
Nonadvertising portion	2.4	2.7	3.0	3.3	3.6	3.8	4.1	4.4	4.7	5.0
Advertising portion:										
Zone:										
1 and 2	4.4	4.6	5.1	5.5	5.9	6.3	6.7	7.0	7.4	7.8
3	5.2	5.5	5.9	6.3	6.7	7.0	7.4	7.8	8.1	8.5
4	6.7	7.1	7.4	7.7	8.1	8.4	8.7	9.0	9.4	9.7
5	8.4	8.7	9.1	9.4	9.8	10.1	10.5	10.8	11.2	11.5
6	9.1	9.6	10.0	10.5	11.0	11.5	12.0	12.4	12.9	13.4
7	9.3	10.0	10.7	11.4	12.1	12.7	13.4	14.1	14.8	15.5
8	9.5	10.4	11.3	12.2	13.2	14.1	15.0	15.9	16.8	17.7
Minimum-per-piece	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Per-piece	0.2	0.3	0.5	0.6	0.8	0.9	1.1	1.2	1.4	1.5

APPENDIX D

SECOND-CLASS PHASED RATES: CLASSROOM PUBLICATIONS, OUTSIDE COUNTY

	Phased rates (cents)									
	Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
Per-pound:										
Nonadvertising portion	2.3	2.6	2.9	3.2	3.5	3.8	4.1	4.4	4.7	5.0
Advertising portion:										
Zone:										
1 and 2	3.6	4.1	4.5	5.0	5.5	5.9	6.4	6.9	7.4	7.8
3	4.3	4.8	5.2	5.7	6.2	6.6	7.1	7.6	8.0	8.5
4	5.7	6.2	6.6	7.0	7.5	7.9	8.4	8.8	9.3	9.7
5	7.1	7.6	8.1	8.6	9.1	9.6	10.0	10.5	11.0	11.5
6	8.7	9.2	9.7	10.3	10.8	11.3	11.8	12.4	12.9	13.4
7	9.4	10.1	10.7	11.4	12.1	12.8	13.5	14.1	14.8	15.5
8	11.0	11.7	12.5	13.2	14.0	14.7	15.5	16.2	17.0	17.7
Minimum-per-piece	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Per-piece	0.1	0.3	0.4	0.6	0.7	0.8	1.0	1.1	1.3	1.4

APPENDIX E

CONTROLLED CIRCULATION PHASED RATES

	Phased rates (cents)				
	Year Beginning July 6, 1972				
	1	2	3	4	5
Per-pound	15	15	15	15	15
Minimum-per-piece	4.0	4.3	4.5	4.8	5.0

APPENDIX F

THIRD-CLASS PHASED RATES

Rate category	Phased rates (cents) Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
Single-piece:										
First 2 ounces	8	8	8	8	8					
Each additional ounce	2	2	3	3	4					
Regular Bulk:										
Per-pound:										
Ordinary matter	23	24	24	25	26					
Books, catalogs, etc	17	18	20	21	22					
Minimum-per-piece [1]	4.0	4.2	4.4	4.6	4.8					
Minimum-per-piece [2]	4.2	4.4	4.6	4.8	5.0					
Nonprofit Bulk:										
Per-pound:										
Ordinary matter	11	11	12	12	12	12	12	13	13	13
Books, catalogs, etc	8	9	9	9	10	10	10	10	11	11
Minimum-per-piece	1.7	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.1	2.1

[1] First 250,000 pieces sent annually by a mailer.
[2] Pieces in excess of first 250,000 sent annually by a mailer.

APPENDIX G

SPECIAL-RATE FOURTH-CLASS MAIL: PHASED RATES

	Phased rates (cents) Year beginning July 6, 1972				
	1	2	3	4	5
First pound	14	16	18	20	22
Each additional pound	7	8	9	10	11

APPENDIX H

LIBRARY-RATE FOURTH-CLASS MAIL

	Phased rates (cents) Year beginning July 6, 1972									
	1	2	3	4	5	6	7	8	9	10
First pound	6	6	7	7	8	8	9	9	10	10
Each additional pound	2	3	3	3	4	4	4	4	5	5

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

ACCURATE CALCULATOR CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Accurate Calculator Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 4, 1973, through February 13, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2452 Filed 2-7-73;8:45 am]

[70-5295]

AMERICAN NATURAL GAS CO.

Notice of Proposed Amendment of Certificate of Incorporation

Notice is hereby given that American Natural Gas Co. (American Natural), 30 Rockefeller Plaza, Suite 4950, New York, N.Y. 10020, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

American Natural proposes to submit to its stockholders, at its annual meeting to be held April 25, 1973, a proposal to amend its certificate of incorporation to increase from 19 to 24 million the aggregate number of authorized shares of common stock, par value $10 per share. It is stated that the additional shares of authorized stock, the issuance and sale of which from time to time are to be the subject of future filings with this Commission, are necessary to provide the cash required for the common stock equity component of the capital requirements of the American Natural holding company system. The proposed amendment will require the affirmative vote of the holders of a majority of American Natural's common stock, of which 18,432,532 shares are presently issued and outstanding. American Natural intends to solicit proxies by mail, in person, or by telephone by not more than three of its officers.

It is stated that the fees and expenses of American Natural to be paid in connection with the proposed amendment will not exceed $4,000, including charges of $1,000 for the services at cost of American Natural Gas Service Co., American Natural's wholly owned service company. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 1, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said 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, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2456 Filed 2-7-73;8:45 am]

[811-1555]

BROWN GROWTH-INCOME FUND, INC.

Filing of Application for Order Declaring Company Has Ceased To Be An Investment Company

Notice is hereby given that the Brown Growth-Income Fund, Inc. (Applicant),

915 Fort Street, Suite 1100, Honolulu, Hawaii, registered under the Investment Company Act of 1940 (Act) as an open-end diversified management investment company, has filed an application pursuant to section 8(f) of the Act of an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Pursuant to an Agreement and Plan of Reorganization (Plan) dated October 9, 1972, between Applicant and the Brown Fund of Hawaii, Ltd. (Brown), which Plan was approved by the shareholders of Applicant on December 5, 1972, Applicant transferred all of its assets to Brown on December 14, 1972, in exchange for shares of Brown's common stock, which shares were thereupon distributed to Applicant's shareholders.

Applicant represents, among other things, that except for those shares held by one shareholder, all of its outstanding shares have been surrendered to Applicant in exchange for shares of Brown; that it has no assets at the present time; that its public offering has been terminated; and that it is in the process of liquidation and dissolution.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 26, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2458 Filed 2-7-73;8:45 am]

[812-3351]

F & M TAX EXEMPT BOND FUND, AND FOSTER & MARSHALL INC.

Notice of Filing of Application for Order of Exemption

Notice is hereby given that F & M Tax Exempt Bond Fund, First Series (and subsequent series) (the Fund), and Foster & Marshall Inc., 205 Columbia Street, Seattle, WA 98104, sponsor of the Fund (the Sponsor) (hereinafter collectively called (Applicants)), have filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (the Act) for an order exempting themselves and all subsequent series from the provisions of section 14(a) of the Act, and Rule 19b-1 and Rule 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein which are summarized below.

The Fund is registered under the Act as a unit investment trust, and has filed a registration statement on Form S-6 under the Securities Act of 1933. The objective of the Fund and of the subsequent series (collectively referred to hereinafter as the Funds), will be to seek tax-exempt income through investment in high quality tax-exempt bonds. The Funds will be governed by a trust agreement (the Agreement) under which the Sponsor will act as depositor, U.S. Trust Company of New York will act as Trustee (the Trustee), and Standard and Poor's Corp., will act as evaluator. The Agreement will contain standard terms and conditions of trust common to all the Funds. Pursuant to the Agreement, the Sponsor will deposit with the Trustee not less than $3 million principal amount of Bonds (the Bonds), and simultaneously the Trustee will deliver to the Sponsor registered certificates for units which will represent the total number of shares of the Funds. The units will then be offered for sale to the public by the Sponsor. All of such Bonds will be interest bearing obligations of States and territories of the United States and political subdivisions and authorities thereof, the interest on which is exempt from Federal income taxation.

Each Fund will consist of the Bonds, such bonds as may continue to be held from time to time in exchange or substitution for any of the Bonds upon certain refundings, accrued and undistributed interest and undistributed cash. Certain of the Bonds may from time to time be sold under the special circumstances set forth in the Agreement, or may be redeemed or may mature in accordance with their terms. The proceeds from such dispositions will be distributed to Unit Holders and not reinvested. There will be no sale and reinvesting of the Bonds.

Each Unit for a particular Fund will represent a fractional undivided interest in that Fund. Units will be redeemable. In the event that any unit shall be redeemed, the portion of the fractional undivided interest represented by each unit outstanding will be increased. Units will remain outstanding until redeemed or until the termination of the Agreement. The Agreement may be terminated by 100 percent agreement of the Unit Holders or, in the event that the value of the Bonds shall fall below 20 percent of the amount originally deposited in the Fund, upon direction of the Sponsor.

Section 14(a). Section 14(a) of the Act requires that a registered investment company (a) have a net worth of at least $100,000 prior to making a public offering of its securities, (b) have previously made a public offering, and at that time have had a net worth of $100,000, or (c) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

Applicants seek an exemption from the provisions of section 14(a) in order that they may make a public offering of units of the Funds as described above. In connection with the requested exemption from section 14(a), the Sponsor has agreed (i) to refund on demand and without deduction the sales load to purchasers of units, if within 90 days after the registration of a Fund under the Securities Act of 1933 becomes effective, the net worth of that Fund shall be reduced to less than $100,000 or if the Fund is terminated, (ii) to instruct the Trustee on the date the bonds are deposited in each Fund that if the Fund shall at any time have a net worth of less than 20 percent of the principal amount of bonds originally deposited in the Fund, as a result of redemption by the Sponsor of units constituting a part of the unsold units, the Trustee shall terminate the Fund in the manner provided in the Trust Agreement and distribute any bonds or other assets deposited with the Trustee pursuant to the Trust Agreement as provided therein; and (iii) in event of termination for the reasons described in (ii) above to refund any sales load to any purchaser of units purchased from the Sponsor on demand and without any deduction.

Rule 19b-1. Rule 19b-1 (a) under the Act provides, in substance, that no registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall distribute more than one capital gain distribution in any 1 taxable year. Paragraph (b) of the rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain distributions received from a "regulated investment

company" within a reasonable time after receipt.

Distributions of principal and interest to unit holders of the Fund are to be made on a quarterly basis. Distributions of principal constituting capital gains to unit holders may arise in two instances: (1) If an issuing authority calls or redeems an issue held in the portfolio, the sums received by the Fund will be distributed to a unit holder on the next distribution date; and (2) if units are redeemed by the Trustee and bonds from the portfolio are sold to provide the funds necessary for such redemption each unit holder will receive his pro rata portion of the proceeds from the bonds sold. In such instances, a unit holder may receive in his distribution funds which constitute capital gains since in many cases the value of the portfolio bonds redeemed or sold will have increased since the date of initial deposit.

Paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gains received from a "regulated investment company" within a reasonable time after receipt. Applicants state that the purpose of this provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicants contend that their situation is within the intended objectives of this provision. However, in order to comply with the literal requirements of the rule, a Fund would be forced to hold any moneys which would constitute capital gains upon distribution until the end of its taxable year. Applicants also contend that such a practice would clearly be to the detriment of the unit holders.

In support of the requested exemption, the application states that the dangers against which Rule 19b–1 is intended to guard do not exist in Applicants' situation since the events which give rise to capital gains are independent of any action by the Sponsor and the Trustee. In addition, it is alleged that the amounts involved in a normal distribution of principal are relatively small in comparison to the normal interest distribution, and such distributions are clearly indicated in accompanying reports to unit holders as a return of principal.

Rule 22c–1. Rule 22c–1 provides, in pertinent part, that redeemable securities of registered investment companies may be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicants state that the rule has two purposes: (1) To eliminate or reduce any dilution of the value of outstanding redeemable securities of registered investment companies which would occur through the redemption or repurchase of such securities at a price above their net asset value or the sale of such securities at a price based on a previously established net asset value which would permit a potential investor to take advantage of an upswing in the market and the accompanying increase in the net asset value of the securities; and (2) to minimize speculative trading practices in the securities of registered investment companies.

The Sponsor intends to maintain a market for units of the Funds, subsequent to the initial public offering, and to continuously offer to purchase such units at prices, which in no event will be less than the aggregate bid side evaluation of the underlying bonds in the various Funds. Such market making activities would cease if the Trust Agreement for such Fund were terminated or the right of redemption for such Fund were suspended. The Sponsor further intends to resell such units at a public offering price computed in the same manner as is applicable to sales during the initial public offering period. The Sponsor states that it may discontinue such purchases of units in the secondary market if the supply of such units should exceed demand, or for other business reasons. During the initial offering period and thereafter, the price offered by the Sponsor for the purchase of a unit must be an amount not less than the redemption price of such unit, which is based on the aggregate bid side evaluation of the underlying bonds on the date on which such unit is tendered for redemption.

Applicants state that transactions in units of the Funds in the secondary market cannot dilute the value of outstanding securities since each Fund consists of a stable portfolio of bonds and each unit represents a fractional undivided interest in that portfolio. By the terms of the Agreement for each Fund, the number of units may not be increased, and therefore the Applicants state that the price at which units are sold or repurchased does not affect the value of either the underlying bonds or the fractional undivided interest in those bonds which is represented by each outstanding unit. Applicants state further that the only instance in which Fund assets are involved in a secondary market transaction is upon redemption of a unit, and in the case of redemption the Funds will follow the practice of daily pricing and forward pricing set forth in Rule 22c–1.

Applicants further assert that secondary market trading in the Funds is not attractive to speculators and that the Funds are designed for investors who desire fixed income. Applicants anticipate that the number of units available in the secondary market will be very limited.

Applicants contend that the application of Rule 22c–1 to the Funds, causing additional evaluations of the Funds by the independent evaluator who is paid for each evaluation, would be so costly as to be significantly detrimental to the interests of the unit holders, particularly in light of the anticipated low volume of secondary market activity.

In addition, the application states that the Sponsor has undertaken to adopt a procedure whereby the evaluator, without a formal evaluation, will provide estimated evaluations on trading days. In the case of a repurchase, if the evaluator cannot state that the previous Friday's price is at least equal to the current bid price, the Sponsor will order a full evaluation. The Sponsor has agreed that in case of the resale of units in the secondary market if the evaluator cannot state that the previous Friday's price is not more than one-half point ($0.50 on a unit representing $100 principal amount of underlying bonds) greater than the current offering price, a full evaluation will be ordered.

Applicants state that "backward pricing" is necessary in order that the Sponsors are able to quote a price at which it will purchase units. Trades accomplished at a price to be determined several days in the future, the Applicants contend, would be unsatisfactory to the unit holders as well as to the Sponsors.

Rule 22c–1, in addition, requires that net asset value be determined as of the time of the close of trading on the New York Stock Exchange (presently 3:30 p.m. New York time). The Sponsors state that it is anticipated that many of the bonds in the portfolios of the various Funds will be traded either exclusively or principally in the over-the-counter market, and the time of the close of trading on the New York Stock Exchange is therefore not necessarily related to the evaluation procedures used in determining net asset value of the Funds. The Sponsors state also that the evaluator has indicated that 3:30 p.m. is the proper time to obtain reliable evaluations, regardless of the time of the close of trading on the New York Stock Exchange.

Section 6(c) of the Act provides that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 27, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission orders a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Applicants at the address stated above. Proof of such service (by affidavit, or in

the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in the matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2459 Filed 2-7-73;8:45 am]

[File No. 500-1]

FIRST LEISURE CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value and all other securities of First Leisure Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 5, 1973 through February 14, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2455 Filed 2-7-73;8:45 am]

[File No. 500-1]

FIRST WORLD CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the class A and class B common stocks, $0.15 par value, and all other securities of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 4, 1973 through February 13, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2463 Filed 2-7-73;8:45 am]

[File No. 500-1]

LILAC TIME, INC.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.05 par value, and all other securities of Lilac Time, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 4, 1973 through February 13, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2454 Filed 2-7-73;8:45 am]

[812-3225]

NEW AMERICA FUND, INC.

Notice of Filing of Application for Order Exempting Proposed Transaction

Notice is hereby given that New America Fund, Inc. (applicant), 1900 Avenue of the Stars, Suite 2400, Los Angeles, CA 90067, a closed-end, diversified, management investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 17(b) of the Act for an order exempting from the provisions of section 17(a) of the Act the sale by Applicant of an aggregate of 13,203 shares of Under Sea Industries, Inc. (Under Sea) common stock to Richard Bonin and Richard I. Vizvary (the Employees) for cash in the amount of $2.05 per share, or for the aggregate consideration of $27,066. Such amount is equal to the purchase price paid by Applicant for the stock. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant is the owner of approximately 8.9 percent of the outstanding voting securities of Under Sea. As such, Under Sea is an "affiliated person" of Applicant within the meaning of section 2(a)(3) of the 1940 Act. The Employees, as officers and employees of Under Sea, are persons affiliated with an affiliated person of Applicant. The application alleges that neither Messrs. Vizvary, Bonin or any other officer or employee of Under Sea has any other relationship with Applicant, or any of Applicant's affiliates. Neither Applicant nor any of its affiliates (other than Under Sea) has any interest, direct or indirect, in the proposed transaction except as a stockholder of Under Sea.

Prior to October 5, 1972, on which date a public offering was made of Under Sea's stock, Applicant owned 55,800 shares of Under Sea $1 par value common stock and 114,855 shares of Under Sea nonvoting convertible preferred stock, all of which were purchased in February 1970. At October 5, 1972, Under Sea had outstanding 578,460 shares of common stock and no other shares of preferred stock. Accordingly, if the preferred stock owned by Applicant had then been converted, Applicant would have owned 24.6 percent of Under Sea's outstanding common stock. Since February 1970, Applicant has made no other purchases of Under Sea securities and has made no sales of any such securities, except as described below.

Applicant is advised that prior to October 5, 1972, in addition to it, 10 individuals, most of whom are employees of Under Sea, owned all of the outstanding common stock of Under Sea. Gustav Dalla Valle, President and Chief Executive Officer of Under Sea, owned 460,350 shares of Under Sea common stock. This represented approximately 73 percent of the outstanding common stock on such date. Without giving effect to the sale to them by Mr. Dalla Valle and the proposed sale to them by Applicant, as described herein, Mr. Bonin owned 23,715 shares or approximately 4.1 percent of the outstanding common stock, and Mr. Vizvary owned 3,720 shares or approximately 0.6 percent of the outstanding common stock.

In connection with the proposed sale by Applicant, Mr. Dalla Valle has sold an aggregate of 27,900 shares to Messrs. Bonin and Vizvary and 9,300 shares to two employees of Under Sea at the same price per share as the proposed sale by Applicant.

The reason for the proposed transaction is as follows: Messrs. Bonin and Vizvary are the Senior Vice President and Vice President, respectively, of Under Sea. Applicant believes that they are key executives and, as such, the success of Under Sea is, to a substantial extent, dependent on their efforts.

In 1970, Under Sea's principal shareholder, Mr. Dalla Valle, decided that it would be desirable if Messrs. Bonin and Vizvary and other key employees of Under Sea owned equity interests in Under Sea. After discussion, and with the Applicant's consent, it was determined that Under Sea would be caused to adopt a qualified stock option plan covering an aggregate of 10 percent of its outstanding stock. Applicant is advised that informal commitments were made by Mr. Dalla Valle to Messrs. Bonin and Vizvary that options amounting to an aggregate of 47,895 shares would be

issued to them with an exercise price of $2.05 per share. Such exercise price was based on the purchase price paid by the Applicant when it purchased Under Sea stock in February, 1970. Of the remainder of the shares to be included in the stock option plan, it was determined to grant similar options, covering an aggregate of 10,230 shares to two additional persons, with the same exercise price.

Notwithstanding the decision of the principal shareholders of Under Sea, as set forth above, corporate action by Under Sea to effectuate the proposed stock option plan was delayed for more than a year and had not been taken by the start of 1972.

In 1972, issuance of the foregoing options was discussed by Under Sea with counsel and its independent accountants. By that time it seemed apparent that the value of Under Sea's common stock exceeded $2.05 per share. Under Sea was advised that in view of this, issuance of such options in 1972 would give rise to the probable necessity of a charge against Under Sea's earnings equal to the difference between the exercise price of the options and the then fair market value of the shares. Such possibility was due to the lack of the required corporate action granting the options in 1970 (when no such differential existed). For this reason, it was determined not to be in the interests of Under Sea and its shareholders, including the Applicant, to issue the foregoing options.

To avoid unfairness to Messrs. Bonin and Vizvary and to accomplish the desire that such persons and the two employees mentioned above obtain equity interests in Under Sea, the proposed transaction was suggested. Pursuant to the proposed transaction, the officers and employees would be enabled to purchase approximately the same percentage of Under Sea's shares as initially contemplated without any dilution to the shareholders of Under Sea, including the Applicant, beyond that contemplated in the initial proposal to grant stock options. This would be accomplished by the sale, by Mr. Dalla Valle and the Applicant directly to Messrs. Bonin, Vizvary and the two employees of an aggregate of 50,403 shares at a price of $2.05 per share.

From the standpoint of the Applicant and the other shareholders of Under Sea, the proposed transaction will permit accomplishment of the original objective without any sacrifice of their interests beyond the dilution which would have resulted had options been issued in 1970. On the other hand, failure to satisfy the commitments made to Messrs. Bonin and Vizvary could well result in the loss of such persons as Under Sea employees, and adversely affect Under Sea.

On October 5, 1972, an initial public offering was made of shares of the common stock of Under Sea. The registration statement covering the proposed offering was filed July 26, 1972 (File No. 2-45125) and became effective October 5, 1972. In the public offering, 100,000 shares of common stock were sold on behalf of Under Sea and 100,000 shares were sold on behalf of Applicant. The initial public offering price per share was $12.75 and the price per share received by Applicant was $11.73. Upon completion of the offering, Applicant converted all of the Preferred Stock of Under Sea owned by it. Accordingly, Applicant presently owns a total of 70,655 shares, or approximately 8.9 percent of Under Sea's outstanding common stock.

Applicant submits that the terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and further that the proposed transaction is consistent with the investment policy of Applicant and the general purposes of the Act.

Section 17(a)(2) of the Act provides, in pertinent part, that it shall be unlawful for an affiliated person of a registered investment company knowingly to purchase from such registered company any security or other property. Section 17(b) of the Act provides that notwithstanding subsection 17(a), any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of that subsection, and the Commission shall grant such application and issue such order of exemption if evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person may not later than February 27, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued by the Commission upon the basis of the information stated in the application, unless an order for hearing upon said proposal shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2446 Filed 2-7-73;8:45 am]

[File No. 500-1]

NOVA EQUITY VENTURES, INC.

Order Suspending Trading

FEBRUARY 1, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Nova Equity Ventures, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 2, 1973, through February 11, 1973.

By the Commission.

RONALD F. HUNT, *Secretary.*

[FR Doc.73-2450 Filed 2-7-73;8:45 am]

[70-5300]

OHIO EDISON CO.

Issue and Sale of Stock; Issue of Bonds; Charter Amendment

Notice of proposed issue and sale of 350,000 shares of preferred stock at competitive bidding, issue of bonds for sinking fund purposes, proposed charter amendment and solicitation of proxies in connection therewith.

Notice is hereby given that Ohio Edison Co. (Ohio Edison), 47 North Main Street, Akron, OH 44308, a registered holding company and a public utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(c) of the Act and Rules 50 and 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Edison proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 350,000 shares of its ____ percent series preferred stock, $100 par value per share. The dividend rate of the preferred stock (which will be a multiple of .04 percent)

and the price, exclusive of accrued interest, to be paid to Ohio Edison (which will not be less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. The terms will include a prohibition until March 1, 1978, against refunding the issue, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost or of other preferred stock at a lower effective dividend cost.

The proceeds from the sale of the preferred stock will be used for the acquisition of property, the construction, completion, extention, renewal, or improvement of Ohio Edison's facilities or for the improvement of its service, or for the repayment of unsecured short-term debt, estimated to be outstanding at the time of issue in the amount of $27 million, or for the reimbursement of its treasury for expenditures made for such purposes.

Ohio Edison also proposes, on or about May 1, and November 1, 1973, to issue $7,973,000 principal amount of its first mortgage bonds 3¼ percent series of 1955, due 1985, under the provisions of its twelfth supplemental indenture dated as of May 1, 1955, and to surrender such bonds to the trustee in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on July 21, 1972 (Holding Company Act, release No. 17652), and are to be issued on the basis of unfunded property additions. Ohio Edison estimates that, after giving effect to the issuance of sinking fund bonds, unfunded net property additions will amount to approximately $176,500,000, as of November 30, 1972.

Ohio Edison also proposes to amend its corporate charter in order to permit it to issue shares of common stock without first making a preemptive rights offering of such shares to each common stockholder, provided such shares are issued in a public offering or to or through underwriters who shall have agreed to make a public offering. It is stated that removal of the preemptive rights provision should provide greater cash proceeds to Ohio Edison and a greater opportunity to take advantage of favorable market conditions.

The declaration states that the adoption of the proposed amendment of Ohio Edison's corporate charter will require the favorable vote of the holders of at least two-thirds of the total number of outstanding shares of common stock.

It is stated that the issue and use of the sinking fund bonds and the issue and sale of the preferred stock are subject to the jurisdiction of the Public Utilities Commission of Ohio, and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be paid in connection with the sinking fund bonds are estimated at $1,600, including counsel fees of $500. The fees and expenses to be paid in connection with the elimination of preemptive rights are estimated at $8,700, including counsel fees of $5,000. The fees and expenses to be paid in connection with the issuance and sale of the preferred stock will be filed by amendment.

Notice is further given, that any interested person may, not later than February 26, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said 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, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2449 Filed 2-7-73;8:45 am]

[File No. 500-1]

PELOREX CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.10 par value, and all other securities of Pelorex Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 5, 1973, through February 14, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2461 Filed 2-7-73;8:45 am]

[70-5299]

PENNSYLVANIA POWER CO.

Notice of Proposed Issue of First Mortgage Bonds for Sinking Fund Purposes and Issue and Sale of Preferred Stock at Competitive Bidding

Notice is hereby given that Pennsylvania Power Co. (Pennsylvania), 1 East Washington Street, New Castle, PA 16103, an electric utility subsidiary company of Ohio Edison Co., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Pennsylvania proposes to issue $1,097,000 principal amount of first mortgage bonds, 3¼ percent series due 1982 (Sinking Fund Bonds) to the First National City Bank, as trustee, under its indenture dated November 1, 1945, as amended and supplemented (particularly by the third supplemental indenture dated February 1, 1952) and to surrender such Sinking Fund Bonds to the trustee in accordance with the sinking fund requirements. The Sinking Fund Bonds are to be identical with those authorized by the Commission on May 9, 1972 (Holding Company Act Release No. 17564), and due to be issued on the basis of property additions. Pennsylvania proposes to use the Sinking Fund Bonds solely to obtain the inclusion in its general funds of the sinking fund payments on deposit and required to be made on or before December 1, 1973, with the trustee under the sinking fund provisions of the indenture. The cash so acquired by Pennsylvania will be applied toward its cash requirements in 1973.

Pennsylvania also proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 60,000 shares of its __ percent series preferred stock, $100 par value per share. The dividend rate of the preferred stock (which will be a multiple of 0.04 percent) and the price, exclusive of accrued interest, to be paid to Pennsylvania (which will not be less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. The terms will include a prohibition until March 1, 1978, against refunding the issue, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost or of other preferred stock at a lower effective dividend cost.

The net proceeds from the sale of the preferred stock will be used by Pennsylvania to construct and acquire new facilities and to improve existing facilities to repay bank loans incurred for such purposes, estimated to aggregate $1,200,000 at the time of the sale of the preferred stock and to reimburse its treasury

in part for moneys expended for such construction purposes.

It is stated that the Pennsylvania Public Utility Commission has jurisdiction over the proposed issue and sale of the Sinking Fund Bonds and the preferred stock. It is represented that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the Sinking Fund Bonds are estimated at $2,000, including counsel fee of $500. The fees and expenses to be paid in connection with the issuance and sale of the preferred stock will be filed by amendment.

Notice is further given that any interested person may, not later than February 26, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application 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, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2448 Filed 2-7-73;8:45 am]

[File No. 500-1]

POWER CONVERSION, INC.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Power Conversion, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 3, 1973, through February 12, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2464 Filed 2-7-73;8:45 am]

[File No. 500-1]

ROYAL AIRLINE, INC.

Order Suspending Trading

JANUARY 30, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $1 par value, and all other securities of Royal Airline, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 1:30 p.m., (e.s.t.), on January 30, 1973, through February 8, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2451 Filed 2-7-73;8:45 am]

[70-5302]

SOUTHERN CO.

Notice of Proposed Increase in Authorized Number of Common Shares and Solicitation of Proxies

Notice is hereby given that The Southern Co. (Southern), 64 Perimeter Center East, Post Office Box 720071, Atlanta, GA 30346, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern proposes to amend its Certificate of Incorporation so as to increase its authorized number of shares of common stock of the par value of $5 per share from 80 million (of which 70,749,500 are issued and outstanding) to 110 million shares. Adoption of the proposed amendment requires the favorable vote of the holders of at least a majority of the outstanding shares of the common stock.

Southern also proposes to solicit proxies from the holders of its outstanding common stock in connection with the annual meeting of stockholders scheduled to be held on May 23, 1973, at which action is to be taken with respect to the foregoing proposals.

Southern expects that its presently authorized but unissued shares will be exhausted in 1973; and that the proposed increase in the number of its authorized shares is necessary for purposes of meeting the common equity component of the capital requirements of its subsidiary companies in the immediately following 3 or 4 years.

The fees, commissions and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transactions are to be supplied by amendment. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 27, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said 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, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2457 Filed 2-7-73;8:45 am]

[File No. 500-1]

TOPPER CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

The common stock, $1 par value of Topper Corp. being traded on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Topper Corp. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary

suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 19 (a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 3, 1973 through February 12, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2460 Filed 2-7-73;8:45 am]

[File No. 500-1]

TRIEX INTERNATIONAL CORP.

Order Suspending Trading

FEBRUARY 2, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, of Triex International Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 3, 1973 through February 12, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2453 Filed 2-7-73;8:45 am]

[812-3369]

UNION COMMERCE CORP. AND PROVIDENT NATIONAL BANK

Notice of Filing of Application

Notice is hereby given that Union Commerce Corp. (UCC), 21 Dupont Circle NW., Washington, DC 20036, a Delaware corporation, and Provident National Bank (Provident), 18 South Bryn Mawr Avenue, Bryn Mawr, PA 19010, a national banking association, each of which owns more than 5 percent of the voting stock of Creative Capital Corp. (Creative), which is registered under the Investment Company Act of 1940 (Act), as a nondiversified closed-end management investment company, and is also a licensee under the Small Business Investment Act of 1958, have applied for an order of the Commission pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting UCC and Provident to purchase more than 10 percent of the common stock of Creative from Bank of the Commonwealth (Bank), a Michigan banking corporation, following approval of such purchases by the Small Business Administration (SBA) upon application by Creative and the other parties in interest. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Creative has an authorized capital of 2 million shares of $1 par value common stock, of which 790,000 have been issued; 783,400 shares are outstanding and 6,600 shares are held as Treasury stock. The Union Commerce Bank, 99 percent of the common stock of which is owned by UCC, owns 111,247 shares, or 14.2 percent of the issued common stock of Creative. Provident owns 104,182 shares or 13.3 percent of such stock, and the Bank owns 338,178 shares, or 43.2 percent of such stock.

UCC proposes to purchase 260,452 shares of Creative common stock from Bank, and Provident intends to purchase 57,726 shares of such stock from Bank. Both UCC and Provident will pay Bank at the rate of $7.50 per share of Creative common stock. The relevant Purchase Agreement calls for closing of the transaction on February 15, 1973, and any party may terminate its obligations under the relevant Purchase Agreement if the necessary governmental approvals have not been obtained by the close of business on February 14, 1973. Subsequent to the transactions, Bank will own no shares of Creative common stock; UCC, together with its 99 percent owned subsidiary, The Union Commerce Bank, will own 391,699 shares, or 49.99 percent of such stock; and Provident will own 161,908 shares, or 20.7 percent of such stock.

It is represented that the proposed transaction is permissible under the Bank Holding Company Act of 1956, as amended, and the Small Business Investment Act of 1958.

Section 107.701(b)(1) of Title 13 of the Code of Federal Regulations, promulgated pursuant to the Small Business Investment Act of 1958, requires the prior written approval of the SBA of the proposed transfer of 10 or more percent of the capital stock issued by a licensee under the Small Business Investment Act of 1958, and § 107.701(f) provides that such application shall be filed by the licensee and by other parties in interest.

Under section 17(d) of the Act, and Rule 17d-1 thereunder, it is unlawful for an affiliated person of a registered investment company to effect any transaction in which such investment company is a joint participant without the permission of the Commission. In passing upon applications for orders granting such permission, the Commission is required to consider whether the participation of the investment company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

While Creative is not a party to the proposed transactions, it has made applications to the SBA for approval of such transactions and hence may be deemed a participant in such transactions within the meaning of section 17(d) of the Act and Rule 17d-1 thereunder.

The Board of Directors have concluded that the proposed transactions will help to establish stable ownership of Creative common stock over the near and long-term future, and that such transactions will be in the best interests of Creative and not detrimental to Creative in any way.

Notice is further given that any interested person may, not later than February 13, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses set forth above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

The period of public notification provided for herein is deemed reasonable in view of the nature of the application and the necessity for action on or before February 14, 1973.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2447 Filed 2-7-73;8:45 am]

[File No. 500-1]

U.S. FINANCIAL INC.

Order Suspending Trading

FEBRUARY 2, 1973.

The common stock, $2.50 par value, of U.S. Financial Inc., being traded on the New York Stock Exchange, pursuant to

provisions of the Securities Exchange Act of 1934 and all other securities of U.S. Financial Inc., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 3, 1973, through February 12, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-2462 Filed 2-7-73;8:45 am]

TARIFF COMMISSION

[TEA-W-176]

FISHER ELECTRONICS, INC.; MILROY, PA.

Workers' Petition for a Determination Under Section 301(c)(2) of the Trade Expansion Act of 1962; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of the Milroy, Pa., plant of Fisher Electronics, Inc., a subsidiary of the Emerson Electric Co., St. Louis, Mo., the U.S. Tariff Commission, on February 2, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with radio-tape combination sets, headphones and loudspeaker systems, stereo and quadraphonic AM/FM radios, and radio-phonograph and radio-phonograph-tape player combinations (of the types provided for in items 678.50, 684.70, 685.23 and 685.30 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before February 19, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued February 5, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-2478 Filed 2-7-73;8:45 am]

[TEA-W-177]

ZENITH RADIO CORP.; CHICAGO, ILL.

Workers' Petition for a Determination Under Section 301(c)(2) of the Trade Expansion Act of 1962; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of the Chicago, Ill., plants Nos. 1, 2, 5, and 6 of the Zenith Radio Corp., Chicago, Ill., the U.S. Tariff Commission, on February 2, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with television and radio receivers, radiophonograph combination sets, and phonographs (of the types provided for in items 685.20, 685.23, 685.25, 685.30, and 685.32 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before February 19, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued February 5, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-2479 Filed 2-7-73;8:45 am]

TARIFF COMMISSION

[337-32]

CYLINDER BORING MACHINES AND BORING BARS AND COMPONENTS THEREOF

Notice of Hearing

Notice is hereby given that on March 13, 1973, the U.S. Tariff Commission will hold a public hearing in connection with investigation 337-32, regarding alleged unfair methods of competition and unfair acts in the importation and sale of cylinder boring machines and boring bars made in accordance with the claims of Patents Nos. 3,260,136 and 3,273,423 and components thereof. Notice of institution of the investigation was published in the FEDERAL REGISTER of January 24, 1973 (38 FR 2360).

The hearing will be held on March 13, 1973, at 10 a.m., e.s.t., in the Hearing Room of the Tariff Commission, Eighth and E Streets NW., Washington, DC. All parties concerned will be afforded an opportunity to be present, to produce evidence, and to be heard concerning the subject matter of the investigation. Interested parties desiring to appear and give testimony at the hearing should notify the Secretary of the Commission in writing at least 5 days in advance of the opening of the hearing.

By order of the Commission.

Issued February 5, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-2477 Filed 2-7-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-73-10]

HOOVER BALL AND BEARING CO., ET AL.

Applications for Variances and Interim Orders; Grant of Interim Orders

1. *Hoover Ball and Bearing Co.*—I. *Notice of Application.* Notice is hereby given that Hoover Ball and Bearing Co., Glenvale Products Division, 1002 East Section Line, Malvern, AR 72104, has made application pursuant to section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1594), and 29 CFR, Part 1905 for a variance, and for an interim order pending a decision on the application for a variance, from the occupational safety and health standards prescribed in 29 CFR 1910.95, concerning occupational noise exposure; 29 CFR 1910.212(a)(3)(ii), concerning point of operation guarding; 29 CFR 1910.217(b)(6), (b)(7)(ii), (c)(1), (d)(7), and (d)(9)(iv), concerning mechanical power presses; and 29 CFR 1910.219, concerning mechanical power-transmission apparatus.

The address of the place of employment that would be affected by the application is as follows:

Hoover Ball and Bearing Co., Glenvale Products Division, 1002 East Section Line, Malvern, AR 72104.

The applicant certifies that employees who would be affected by the variance requested have been notified of the application by giving a copy of the application to Elmer Nugent, the President of Local 415, UAW. The notice informs the employees of their right to petition for a hearing.

A. Regarding the merits of the application, the applicant states that a time

extension until August 15, 1973, is needed to come into compliance with 29 CFR 1910.95, as several approaches of engineering changes are being considered, and the applicant at the present time does not have the personnel necessary to effectuate noise reduction control. The applicant must rely substantially on outside experts and contractors to achieve the necessary engineering contracts.

According to the application, the following engineering changes to reduce noise levels are being considered: installation of air mufflers to reduce noise caused by release of compressed air; installation of isolation pads under presses to prevent transmittal of impact noise; construction by qualified contractors of a sound proof room around the "gate" (scrap) crusher to isolate the noise from the employees; and the possible use of noise deadening coating for barrel finishing operations. The applicant states that until engineering changes can be made to reduce excessive occupational noise to permissible levels, the employees have been provided with personal protective equipment, the American Optical Co. Hearing Protector (Muff) Model 1600.

B. The applicant further states that a time extension until September 15, 1973, is needed to come into compliance with 29 CFR 1910.212(a)(3)(ii), because engineering fabrication and installation of new equipment is required. The applicant states that until the applicable standards can be complied with, safety shields are in use on the side opposite the operator to protect nonoperators, and all supervising personnel are reemphasizing proper operating procedure and safety practices to keep employees alert against injury.

C. The applicant further states that a time extension until February 15, 1973, is needed to come into compliance with 29 CFR 1910.217(b)(6), (b)(7)(ii), (c)(1), (d)(7), and (d)(9)(iv), because of a lack of qualified personnel at the Glenvale Products Division to perform the required alterations. The applicant states that until the standards can be complied with, the following steps are in effect: two-band operating controls have been installed on 80 percent of the hydraulic presses; safety blocks are available for use when repairing or adjusting a die in a press; and 60 percent of the presses have been guarded on at least three sides to prevent nonoperating personnel from putting any part of their body near the point of operation.

D. Finally, the applicant states that a time extension until September 15, 1973, is needed to come into compliance with 29 CFR 1910.219. The applicant states that until the cited standards can be complied with, all belts and pulleys have been guarded, electrical disconnect lockouts have been installed, and emergency stop buttons have been installed on six of 11 tapping machines.

For further information interested persons are referred to copies of the application which will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the following area office, U.S. Department of Labor, Occupational Safety and Health Administration, Room 512, Petroleum Building, 420 South Boulder, Tulsa, OK 74103.

II. *Interim Order.* It appears from the application for a variance and interim order that an interim order is necessary to avoid undue hardships pending the decision on the merits of the application. Therefore, it is ordered, pursuant to authority in section 6(b)(6)(A) of the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1905.10(c), that Hoover Ball and Bearing Co., Glenvale Products Division, be, and it is hereby, authorized to continue to operate the equipment covered by its application, according to the procedures and with the safety measures described in the application, in lieu of complying with 29 CFR 1910.95; 1910.212(a)(3)(ii); 1910.217(b)(6), (b)(7)(ii), (c)(1), (d)(7), and (d)(9)(iv); and 1910.219.

The applicant, Hoover Ball and Bearing Co., Glenvale Products Division, shall give notice to affected employees of the terms of this interim order by the same means required to be used to inform them of the application for the variance.

Effective date. This interim order shall be effective as of February 8, 1973, and shall remain in effect until a decision is rendered on the application for a variance.

2. *The Stanley Works—Notice of application.* Notice is hereby given that The Stanley Works, New Britain, Conn. 06050, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596) and 29 CFR Part 1905 for a permanent variance from 29 CFR 1910.144 which concerns safety color code for marking physical hazards.

The applicant states that the addresses of the places of employment affected by this application are:

Stanley Air Tools, 700 Beta Drive, Cleveland, OH 44143.
Berry Doors, Division of the Stanley Works, 2400 East Lincoln Road, Birmingham, MI 48012.
Eagle Square Mfg. Co., Shaftsbury, Vt. 05262.
Magnelite, Inc., 6120 Binney Street, Omaha, NE 68104.
Stanley Judd, Division of the Stanley Works, Wallingford, Conn.
Stanley Hardware Division, 195 Lake Street, New Britain, CT 06050.
Amerock Corp., 4000 Auburn Street, Rockford, IL 61101.
Stanley Door Operating Equipment, Route 6, Corner Hyde Road, Farmington, CT 06032.
Farmington River Power Co., Post Office Box 276, Poquonock, CT.
Stanley Judd, Division of the Stanley Works, Chattanooga, Tenn.
Prestressed Concrete of Colorado, Inc., 5601 Pecos Street, Denver, CO 80221.
Stanley, Incorp., Pulaski, Tenn.
Stanley Industrial Components, 33 Stafford Avenue, Forestville, CT 06010.
Stanley Power Tools, West New Bern Station, Neuse Road, New Bern, N.C. 28560.
Stanley Tools Division, 600 Myrtle Street, New Britain, CT 06053.
Stanley Strapping Systems, 835 North Parkside Drive, Pittsburgh, CA 94565.
Stanley-Wetty, Inc., Post Office Box 25, Royersford, PA 19468.
The Stanley Works, 320 Valley Drive, Crocker Industrial Park, Brisbane, CA 94005.
Stanley Industrial Hardware, 100 Curtis Street, New Britain, CT 06053.
Stanley Steel Division, 65 Burritt Street, New Britain, CT 06053.
Stanley Strapping Systems, 1300 Corbin Avenue, New Britain, CT 06053.
Stanley Tools (Atha) Division, 140 Chapel Street, Newark, NJ 07105.
The Stanley Works (Main Office), 195 Lake Street, New Britain, CT 06050.
Vollert Allentown, Queen City Airport Industrial Park, Allentown, PA 18103.
Vollert Stampings Division, 222-34 98th Avenue, Queens Village, NY 11429.

Applicant certifies that all employees who would be affected by the variance requested have been notified of the application by the delivery of a copy of the application to Mr. Carl Primich, president of Local 1433 of the International Association of Machinists, and to Mr. William Andrews, president of Local 1249 of the International Association of Machinists, and a notice of the application has been posted on all bulletin boards. The notice informs employees of their right to petition for a hearing.

Regarding the merits of the application, applicant contends that the Stanley Works safety color code policy is equivalent to one complying with 29 CFR 1910.144. Applicant states that the Stanley Works color code has been in effect since June 26, 1944, and amended in 1953, 1956, and 1966. It is contended that to institute a change would only confuse employees with different color combinations and could lead to accidents.

For further information interested persons are referred to copies of the application and of the Stanley Works safety color code policy which will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the following area offices:

Occupational Safety and Health Administration, U.S. Department of Labor, Federal Building, Room 617, 450 Main Street, Hartford, CT 06103.
Occupational Safety and Health Administration, U.S. Department of Labor, 300 South Wacker Drive, Room 1201, Chicago, IL 60606.
Occupational Safety and Health Administration, U.S. Department of Labor, Federal Building, Room 425, 55 Pleasant Street, Concord, NH 03301.
Occupational Safety and Health Administration, U.S. Department of Labor, Squire Plaza Building, 8527 West Colfax, Lakewood, CO 80202.
Occupational Safety and Health Administration, U.S. Department of Labor, 247 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.
Occupational Safety and Health Administration, U.S. Department of Labor, Michigan Theatre Building, Room 626, 220 Bagley Avenue, Detroit, MI 48226.
Occupational Safety and Health Administration, U.S. Department of Labor, City National Bank Building, Room 630, Harney and 16th Streets, Omaha, NE 68102.

Occupational Safety and Health Administration, U.S. Department of Labor, 1600 Hayes Street, Suite 302, Nashville, TN 37203.
Occupational Safety and Health Administration, U.S. Department of Labor, 1361 East Morehead Street, Char'otte, NC 28204.
Occupational Safety and Health Administration, U.S. Department of Labor, Federal Office Building, 970 Broad Street, Box 635, Newark, NJ 07102.
Occupational Safety and Health Administration, U.S. Department of Labor, 100 McAllister Street, Room 1706, San Francisco, CA 94102.
Occupational Safety and Health Administration, U.S. Department of Labor, 370 Old Country Road, Garden City, Long Island, NY 11530.
Occupational Safety and Health Administration, U.S. Department of Labor, 1317 Filbert Street, Suite 1010, Philadelphia, PA 19107.

3. *Fisher Mills, Inc.—Notice of application.* Notice is hereby given that Fisher Mills, Inc., 3235 16th Avenue SW., Seattle, WA 98134, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596) and 29 CFR Part 1905 for a permanent variance from 29 CFR 1910.176(f) which concerns derail and/or bumper blocks on spur railroad tracks with rolling railroad cars.

The applicant states that the address of the place of employment affected by the application is Fisher Mills, Inc., 3235 16th Avenue SW., Seattle, WA 98134.

Applicant certifies that employees who would be affected by the variance have been notified of the application by posting a notice of the application, and by forwarding a copy to Mr. Jay Taylor, union representative for the AFGM Local No. 86. The notice informs employees of their right to petition for a hearing.

Regarding the merits of the application, the applicant states that the installation of a derailing device or bumper blocks as required in 29 CFR 1910.176(f) on a particular track could increase the dangers to the switchmen and jeopardize its entire plant power transformer station that, because of its location, could be involved in a derail.

The applicant states that the present methods includes a locked gate controlled by a foreman. A switch engine controls all cars entering the premises. After the switch, the foreman places a stanchion which contains a blue flag at the last car to enter the area, and then closes and locks the gate. The applicant contends that many hazards would be created by compliance with § 1910.176(f) in the event of a mishap.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying, upon request, at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the Occupational Safety and Health Administration, 506 Second Avenue, 1906 Smith Tower Building, Seattle, WA 98104.

4. *Weyerhaeuser Co.—I. Notice of application.* Notice is hereby given that Weyerhaeuser Co., Tacoma, Wash. 98401, has made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596) and 29 CFR Part 1905 for a permanent variance and for an interim order pending a decision on the application for a variance from 29 CFR 1910.27(d) (1) and(2) concerning cages or wells for fixed ladders and landing platforms for fixed ladders.

The applicant states that the places of employment involved are in Everett, Wash.; Snoqualmie, Wash.; Enumclaw, Wash., Longview, Wash.; Springfield, Oreg.; Cottage Grove, Oreg.; and Klamath Falls, Oreg.

Applicant certifies that employees who would be affected by the variance have been notified of the application by serving a copy of the application upon their collective bargaining representative and by posting copies at locations customarily used for notices to employees. Employees have been informed of their right to petition for a hearing.

Regarding the merits of the application, the applicant states that fixed fire ladders are available for firefighting purposes only and, therefore, do not include cages or landing platforms. Applicant states that the sole purpose of the ladders is to provide access to roof area for public or private firemen only in case of fire and not for egress from work areas or for fire escapes. The applicant argues that cages or offset platforms are impracticable, and they would render the fire ladders useless and void of their intended purpose.

For further information, interested persons are referred to copies of the application which will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the Occupational Safety and Health Administration, U.S. Department of Labor, 506 Second Avenue, 1906 Smith Tower Building, Seattle, WA 98104.

II. *Interim Order.* It appears from the application for a variance and interim order, and supporting data, filed by the Weyerhaeuser Co., that the fixed ladders, considering their special purposes and limited use, provide places of employment as safe and healthful as those which would prevail if the applicant were to make the changes necessary in order to comply with 29 CFR 1910.27(d) (1) and (2). It further appears from the application that an interim order is necessary to maintain the integrity of the firefighting system. Therefore, It is ordered, pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c) that Weyerhaeuser Co. be, and it is hereby, authorized to continue to use the fixed ladders as set forth in the application for a variance, in lieu of complying with 29 CFR 1910.27(d) (1) and (2), with the condition that applicant post warning signs at each fixed ladder prohibiting its use except for firefighting purposes. Applicant shall give notice to affected employees of the terms of this interim order by the same means required to be used to inform them of the application for a variance.

Effective date. This interim order shall be effective as of February 8, 1973, and shall remain in effect until a decision is rendered on the application for a variance.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of any of the above applications for variances, are invited to submit written data, views, and arguments regarding the relative application prior to March 10, 1973. In addition, employers and employees who believe they would be affected by the grant or denial of any of the variances may request a hearing on the application for the variance within the same period ending March 10, 1973, in conformity with 29 CFR 1905.15. Submissions and requests for a hearing should be in quadruplicate and shall be addressed to the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210.

Signed at Washington, D.C., this 2d day of February 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-2511 Filed 2-7-73;8:45 am]

[V-73-9]

PUBLIC SERVICE ELECTRIC AND GAS CO., ET AL.

Applications for Variances and Interim Orders; Grant of Interim Orders

I. *Public Service Electric and Gas Co.*—(a) *Notice of application.* Notice is hereby given that Public Service Electric and Gas Co., 80 Park Place, Newark, NJ 07101, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1910.145(f) (1), (3), (4), and (5) which deal with requirements and specifications for certain accident prevention tags.

All of the electric operating locations of the applicant will be affected by the application.

The applicant states that employees who would be affected by the variance and interim order requested have been notified of the application by posting a notice, which states where the complete application may be examined, at places where notices to employees are normally posted, and by delivering copies of the notice to the union business agent representing the employees. The notice informs employees of their right to petition the Assistant Secretary for Occupational Safety and Health for a hearing on the application.

In its application, the applicant states that it is seeking a variance from the requirements in § 1910.145(f) (1), (3),

(4), and (5) in order to continue the use of its present tagging system, which is identified as "A-51," entitled "Tagging Procedure," and "A-55," entitled "Procedure with Load Dispatcher and Service Dispatcher." Section 1910.145(f) (1), (3), (4), and (5) provide for the use of "do not start," "danger," and "caution" tags as a temporary means of warning all concerned of a hazardous condition or defective equipment. The company's "A-51" requires the use of three different tags to indicate particular out of service or other abnormal conditions of circuits and equipment. A "red blocking tag" is to be used to block and prohibit the operation of equipment. Such a tag, which includes the words, "do not operate until tag is released and removed," is to be placed at every location where voltage could be introduced into a section where work is to be done. The second tag, called a "yellow permissive tag" is to be used on equipment which is safe for work. Every "yellow permissive tag" must have a "red blocking tag" between it and any source by which the equipment could be energized. The third tag, called a "white or caution tag" is to be used to call attention to any abnormal operating or working condition. "A-55" sets forth the exact procedures to be used in placing and releasing the three sets of tags that are required in "A-51."

Regarding the merits of the application, the applicant states that "A-51" and "A-55" are more stringent and provide safer employment than the standards in § 1910.145(f) (1), (3), (4), and (5). The applicant states that its rules were developed through years of experience in the specialized field of electric generation, transmission, and distribution. The applicant further states that if it is forced to change its procedures to conform to § 1910.145(f) (1), (3), (4), and (5), it is possible that unsafe acts could be committed during the changeover, due to lack of familiarity with the new procedure.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Room 500, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the following Regional and Area offices: Occupational Safety and Health Administration, U.S. Department of Labor, 1515 Broadway (1 Astor Plaza), New York, NY 10036; Occupational Safety and Health Administration, U.S. Department of Labor, Federal Office Building, 970 Broad Street, Room 635, Newark, NJ 07102.

(b) *Interim Order.* It appears likely from the application for a variance that the tagging system designated in the application as "A-51," entitled "Tagging Procedure," and "A-55," entitled "Procedure with Load Dispatcher and Service Dispatcher," would provide employment and places of employment as safe and healthful as those that would prevail if the applicant were to utilize the tags and procedures required in § 1910.154(f) (1), (3), (4), and (5). It further appears from the application that an interim order is necessary while the application is being considered in order to prevent undue hardships to the company and unnecessary hazards to employees, which might result during a changeover from the presently used system to the system required by the standard. Therefore,

It is ordered, Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c), that Public Service Electric and Gas Company of Newark, N.J., be, and it is hereby, authorized to continue the use of "A-51," entitled "Tagging Procedure," and "A-55," entitled "Procedure with Load Dispatcher and Service Dispatcher," as attached to its application, at all of its electric operating locations, in lieu of the tags required in § 1910.145(f) (1), (3), (4), and (5).

II. *Morrison Grain Co. Inc.*—(a) *Notice of application.* Notice is hereby given that Morrison Grain Co., Inc., Post Office Box 748, Salina, KS 67401 made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the standard prescribed in 29 CFR 1910.68(c) (1) (ii) (b) concerning the belt width of manlifts.

The above address is the place of employment affected by the application. The applicant states that all employees who would be affected by the variance have been informed by posting the application on a notice board beside the timeclock. The employees were informed at a safety meeting held in May, 1972, that they have the right to petition the Assistant Secretary for Occupational Safety and Health for a hearing on the application.

In its application, the applicant states that it has a manlift with a 14-inch wide belt and a travel of 200 feet 10½ inches, which was installed in February of 1967. The applicant seeks a variance from the requirement in 29 CFR 1910.68(c) (1) (ii) (b) that a manlift belt be 16 inches wide for travel exceeding 150 feet, in order to continue the use of its 14-inch wide belt.

The applicant states that results from a test conducted by the Omaha Testing Laboratories indicate that its present 14-inch wide belt has a minimum strength of 3,607 pounds per inch of width, or a total of 50,000 pounds for the entire width. The applicant further states that its belt has a safety factor of over 23 to 1, which is a comparison of the 50,000-pound minimum strength of the belt to a 2,130-pound weight on the belt. The 2,130-pound weight is derived by adding the total belt weight (1,460 pounds) to the total weight caused by 200 pounds being put on each of the manlifts 14 steps (2,800 pounds), and dividing the resultant figure by one-half. Accordingly, the applicant contends that its manlift belt is as safe as the 16-inch wide belt required by 29 CFR 1910.68 (c) (1) (ii) (b).

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the following Regional and Area offices: Occupational Safety and Health Administration, U.S. Department of Labor, 1627 Main Street, Room 1100, Kansas City, MO 64108; Occupational Safety and Health Administration, U.S. Department of Labor, 823 Walnut Street, Waltower Building, Room 300, Kansas City, MO 64106.

(b) *Interim Order.* It appears from the application for a variance that the 14-inch belt which is presently in use by the applicant provides employment and places of employment as safe and healthful as those that would prevail if the applicant were to utilize a 16-inch wide belt required in § 1910.68(c) (1) (ii) (b). The applicant's belt, though installed prior to the effective date of the standard (Aug. 27, 1971), appears to exceed the strength and safety factor specifications of ANSI A90.1-1969, which are required in 29 CFR 1910.68(b) (3) of all new belts installed after the effective date. The presently used belt is said to have a minimum strength of 3,607 pounds per inch of width, which exceeds the 2,450 pounds per inch of width strength required in Rule 200(c) (3) of ANSI A90.1-1969. In addition, the belt is said to have a safety factor of over 23, which exceeds the safety factor of 6 required in Rule 206 of ANSI A90.1-1969. In view of all this, it would be inequitable to require conforming changes in the manlift belt or its nonuse during the pendency of this proceeding. Therefore:

It is ordered, Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c) that Morrison Grain Co., Inc., of Salina, Kans., be, and it is hereby, authorized to continue the use of the 14-inch wide manlift belt specified in its application, notwithstanding the requirement set forth in § 1910.68(c) (1) (ii) (b).

III. *Morrison-Quirk Grain Corp.*—(a) *Notice of application.* Notice is hereby given that Morrison-Quirk Corp., Post Office Box 609, Hastings, NE 68901, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596, 29 U.S.C. 655) and 29 CFR § 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the standard prescribed in 29 CFR 1910.68(c) (1) (ii) (b) concerning the belt width of manlifts.

The above address is the place of employment affected by the application. The applicant states that all employees who would be affected by the variance have been informed by posting the application on a notice board beside the timeclock. The employees were informed at a safety meeting held in March 1972, that they have the right to petition the Assistant Secretary for Occupational Safety and Health for a hearing on the application.

In its application, the applicant states that it has a manlift with a 14-inch wide belt and a travel of 200 feet 10½ inches, which was installed in June of 1971. The applicant seeks a variance from the requirement in § 1910.68(c)(1)(ii)(b) that manlift belt be 16 inches wide for travel exceeding 150 feet, in order to continue the use of its 14-inch wide belt.

The applicant states that its present 14-inch wide belt has a minimum strength of 2,450 pounds per inch of width, or a total of 34,300 pounds for the entire width, and a safety factor of over 16 to 1, which is a comparison of the 34,300-pound minimum strength of the belt to a 2,030-pound weight on the belt. The 2,030-pound weight is derived by adding the total belt weight (1,260 pounds) to the total weight caused by 200 pounds being put on each of the manlift's 14 steps (2,800 pounds), and dividing the resultant figure by one-half. Accordingly, the applicant contends that its manlift belt is as safe as a 16-inch wide belt required by § 1910.68(c)(1)(ii)(b).

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, at the following regional and area offices: Occupational Safety and Health Administration, U.S. Department of Labor, 823 Walnut Street, Waltower Building, Room 300, Kansas City, MO 64106; Occupational Safety and Health Administration, U.S. Department of Labor, City National Bank Building, Room 630, Harney and 16th Streets, Omaha, NE 68102.

(b) *Interim Order.* It appears that the application for a variance that the 14-inch belt which is presently in use by the applicant provides employment and places of employment as safe and healthful as those that would prevail if the applicant were to utilize the 16-inch wide belt required in § 1910.68(c)(1)(ii)(b). The applicant's belt, though installed prior to the effective date of the standard (August 27, 1971), appears to meet the strength and safety factor specifications of ANSI A90.1–1969, which are required in § 1910.68(b)(3) of all belts installed after the effective date. The presently used belt has a minimum strength of 2,450 pounds per inch of width, which is equal to the requirement in Rule 200(c)(3) of ANSI A90.1–1969. In addition, the belt has a safety factor of over 16, which exceeds the safety factor of 6 required in Rule 206 of ANSI A90.1–1969. In view of this it would be unequitable to require the manlift to conform in all respects to the standard, or not to be used, until a decision is made on the application. Therefore:

It is ordered, Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1905.11(c) that Morrison-Quirk Grain Corp. of Hasting, Nebr., be, and is hereby, authorized to continue the use of the 14-inch-wide manlift belt specified in the application, notwithstanding the requirement set forth in § 1910.68(c)(1)(ii)(b).

IV. *Bethlehem Steel Corp.—Notice of application.* Notice is hereby given that Bethlehem Steel Corp., Steelton plant, Steelton, Pa. 17113, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11, for a variance from the standards prescribed in 29 CFR 1910.27(b)(1)(iii) and 29 CFR 1910.27(c)(4) concerning certain required designs for fixed ladders.

The above address is the place of employment affected by this application. The applicant states that all employees who would be affected by the variance have been informed by posting a copy of the application at all places where notices to employees are normally posted and by sending a copy to the authorized employee representative, Mr. Jerry Guerrisi, Union Safety Committee Chairman, United Steelworkers of America, Local No. 1688. The employees were informed that they have the right to petition the Assistant Secretary for Occupational Safety and Health, for a hearing on the application by the applicant's giving such notice to Mr. Guerrisi.

In its application, the applicant states that it has wire towers at its Steelton plant which use 12-inch-wide flange beams as main columns. At the top of the towers, are at least two crossarms, one of which carries electrical lines. In order to provide access to the top, 14-inch long, ⅞-inch diameter, ladder rungs are welded to the two flanges of a column beam at 12-inch rung distances. The applicant states that the clear length of each ladder rung is 10½ inches. Section 1910.27(b)(1)(iii) requires that the minimum clear length of rungs shall be 16 inches. The applicant states that because of the physical dimensions of the 12-inch-wide flange beam to which each rung is attached, the clear distance from the centerline of the rung to the nearest permanent object is 6 inches. Section 1910.27(c)(4) requires that the clear distance from the centerline of a rung to the nearest permanent object in back of the ladder shall be not less than 7 inches. The applicant seeks a variance from the above-mentioned standards in order to continue the use of its present ladder rungs.

Regarding the merits of its application, the applicant states that because of the nature of the work involved, only electrical linemen ascend such wire towers and very infrequently. All linemen are required to use lifebelts when ascending and while working on wire towers regardless of tower height. The only time that work is normally performed while standing on the wire towers is when new electrical lines are installed. Once the lines are installed and power is energized, any maintenance work thereafter is normally performed from a boom-type bucket truck.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Room 500, Washington, DC 20210, and at the following Regional and Area offices: Occupational Safety and Health Administration, U.S. Department of Labor, 1317 Filbert Street, Room 623, Philadelphia, PA 19107; Occupational Safety and Health Administration, 1317 Filbert Street, Suite 1010, Philadelphia, PA 19107.

V. *Bethlehem Steel Corp.—Notice of application.* Notice is hereby given that Bethlehem Steel Corp., Fabricated Steel Construction, Bethlehem, PA 18016, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11, for a variance from the standard prescribed in 29 CFR 1910.27(b)(1)(iii) concerning the minimum clear length requirement for fixed ladders.

The above address is the place of employment affected by this application. The applicant states that all employees who would be affected by the variance have been informed by posting a copy of the application at all places where notices to employees are normally posted and by sending a copy to the authorized employee representative, Mr. Nicholas Kiak, Union Safety Committee Chairman, United Steelworkers of America, Local No. 2599. The employees were informed that they have the right to petition the Assistant Secretary for Occupational Safety and Health for a hearing on the application, by the applicant's giving such notice to Mr. Kiak.

In its application, the applicant states that at its Bethlehem Works it has 30 crane access ladders. These ladders are made with bar steel rails and round steel rungs which are fastened to the flange side of columns. The rungs are ¾ inches in diameter with a distance of 11¼ inches between rungs. There is a clear length of 11 inches on each rung. Section 1910.27(b)(1)(iii) requires that the minimum clear length on each rung shall be 16 inches. The applicant further states that 50 to 90 percent of the cranes are manned daily and each ladder is used for an average of four round trips per man.

Regarding the merits of its application, the applicant contends that its ladders provide employment and places of employment to employees equally safe and healthful as those required in § 1910.27(b)(1)(iii). Applicant states that it has had no accidents in 25 years using the ladders, that unauthorized personnel are prohibited from climbing the ladders, and that personnel using the ladders are required to keep both hands free while climbing.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the following Regional and Area offices: Occupational Safety and Health Administration, U.S. Department of Labor, 1317 Filbert Street, Room 623, Philadelphia, PA 19107; Occupational Safety and Health

Administration, U.S. Department of Labor, 1317 Filbert Street, Suite 1010, Philadelphia, PA 19107.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of any of the above applications for variances, are invited to submit written data, views, and arguments regarding the relative application prior to March 10, 1973. In addition, employers and employees who believe they would be affected by the grant or denial of any of the variances may request a hearing on the application for that variance prior to March 10, 1973, in conformity with the requirements of 29 CFR 1905.15. Submissions of written comments and requests for a hearing should be in quadruplicate and shall be addressed to the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20210.

Effective dates of interim orders.—The interim orders granted to Public Service Electric and Gas Co., Morrison Grain Co., Inc., and Morrison-Quirk Grain Corp., shall become effective on February 8, 1973, and shall remain in effect until a decision is rendered on the relative application for a variance. Each company shall give notice of the interim order to its affected employees by the same means to be used to inform them of the application for a variance.

Signed at Washington, D.C., this 2d day of February 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-2510 Filed 2-7-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 175]

ASSIGNMENT OF HEARINGS

FEBRUARY 5, 1973.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 127487 Sub 2, Holt Motor Express, Inc., now being assigned hearing March 19, 1973 (1 week), at Philadelphia, Pa., in a hearing room to be later designated.

No. 35664, The Department of Defense v. Aberdeen and Rockfish Railroad Co., et al, now being assigned April 30, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 29642 Sub 5, Five Transportation Co., now being assigned April 2, 1973 (1 week), at Savannah, Ga., in a hearing room to be later designated.

MC 3700 Sub 66, Manhattan Transit Co., now being assigned hearing March 26, 1973 (1 week), at Newark, N.J., in a hearing room to be later designated.

MC-C-7934, Carolina Cartage Co., Inc.—Investigation of Operations, MC 133937 Sub 7, Carolina Cartage Co., Inc. Extension—Airports, now being assigned March 26, 1973 (3 days), at Columbia, S.C., in a hearing room to be later designated.

MC-C-7939, M & R Transport, Inc., Sun Oil Co., Miller Gas Co., Inc., and Garst L. P. Gas—Investigation of Operations and Practices, now being assigned hearing April 2, 1973 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC-134922 Sub 28, B. J. McAdams, Inc., Extension—Twenty-Four States, now assigned hearing February 26, 1973, will be held in Room 13025, 13th Floor, 450 Golden Gate Avenue, San Francisco, CA.

MC-134068 Sub 13, Kodiak Refrigerated Lines, Inc., now assigned hearing February 28, 1973, will be held in Room 13025, 13th Floor, 450 Golden Gate Avenue, San Francisco, CA.

MC-108053 Sub 113, Little Audrey's Transportation Co., Inc., now assigned hearing March 5, 1973, will be held in Room 1057, Federal Office Building, 909 First Avenue, Seattle, WA.

MC-134884 Sub 4, Farwest Furniture Transport, Inc., now assigned hearing March 12, 1973, will be held in Room 4054, Federal Office Building, 909 First Avenue, Seattle, WA.

MC 136468 Sub 1, Virginia Air Freight, Inc., continued to February 9, 1973, and February 20, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11644, Maplewood Equipment Co.—Control & Merger—Inter-City Transportation Co., Inc., et al., and FD 27179, Maplewood Equipment Co., continued to February 14, 1973 (3 days), at the Robert Treat Hotel, 50 Park Place, Newark, NJ.

MC 117943 Sub 1, Joseph M. Booth, doing business as J. M. Booth Trucking, continued to March 20, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124606 Sub 3, Ford Truck Line, Inc., now assigned February 26, 1973, at Shreveport, La., canceled and reassigned to February 26, 1973, at the Holiday Inn of Shreveport-Bossier City, 150 Hamilton Lane, Interstate Highway 20, Bossier City, La.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2484 Filed 2-7-73;8:45 am]

FOURTH SECTION APPLICATION

FEBRUARY 5, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed on or before February 23, 1973.

FSA No. 42614—*Returned Shipments of Newsprint Paper Winding Cores from and to Points in Eastern and Southwestern Territories.* Filed by Southwestern Freight Bureau, agent (No. B-388), for interested rail carriers. Rates on returned shipments of newsprint paper winding cores, in carloads, as described in the application, from points in official territory, to Herty and Keltys, Tex.

Grounds for relief—Carrier competition.

Tariff—Supplement 68 to Southwestern Freight Bureau, agent, tariff I.C.C. 4657. Rates are published to become effective on March 5, 1973.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2483 Filed 2-7-73;8:45 am]

Office of the Secretary

RAYMOND R. MANION

Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part III, Executive Order 10647 (20 FR 8769) "Providing for the appointment of certain persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Division of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (30 FR 8809; 31 FR 930; 31 FR 13405; 32 FR 769; 32 FR 10786; 33 FR 522; 33 FR 10544; 33 FR 20067; 34 FR 11341; 35 FR 131; 35 FR 12175; 36 FR 1235; 36 FR 14359; 37 FR 3480, and 37 FR 17100, for the 6 months' period ending January 3, 1973.

No change since last statement dated August 16, 1972.

Dated: January 30, 1973.

[SEAL] R. R. MANION,

[FR Doc.73-2486 Filed 2-7-73;8:45 am]

[Notice 206]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 28, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters re-

lied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73929. By order of January 15, 1973, the Motor Carrier Board approved the transfer to Barnum Airfreight, Inc., Lima, Ohio, of the operating rights in Certificates Nos. MC-106023 (Sub-No. 5) and MC-106023 (Sub-No. 6) issued May 15, 1968, and May 9, 1969, respectively, to Barnum Moving and Storage, Inc., Sidney, Ohio, authorizing the transportation of general commodities, with exceptions, between Kenton and Spencerville, Ohio, on the one hand, and, on the other, the Cox Municipal Airport near Dayton, Ohio; and between Lima and Wapakoneta, Ohio, on the one hand, and, on the other, the Cox Municipal Airport, near Dayton, Ohio. The operations authorized herein are restricted to the transportation of traffic having a prior or subsequent movement by air. Paul F. Beery, 88 East Broad Street, Columbus, OH 43215, attorney for applicants.

No. MC-FC-73941. By order of January 16, 1973, the Motor Carrier Board approved the transfer to Charles D. Bolton, doing business as Leitchfield Transfer Co., Leitchfield, Ky., of the operating rights in Certificate No. MC-56667 (Sub-No. 1) issued November 3, 1959, to W. O. Bolton, doing business as Leitchfield Transfer Co., Leitchfield, Ky., authorizing the transportation of general commodities, except petroleum products in bulk, commodities of unusual value, classes A and B explosives, and household goods as defined by the Commission, between Louisville, Ky., and Leitchfield, Ky., serving all intermediate and off-route points on or within 3 miles of that portion of U.S. Highway 62 extending between Elizabethtown, Ky., and Leitchfield, Ky., excluding Elizabethtown; and the off-route points in Indiana and Kentucky within 5 miles of Louisville, Ky. Robert M. Pearce, Post Office Box E, Bowling Green, KY 42101, attorney for applicants.

No. MC-FC-74070. By order of January 15, 1973, the Motor Carrier Board approved the transfer to J. W. Douglass Corp., Swansea, Mass., of Certificate No. MC-123395 issued December 1, 1961, to John F. Isabella, Providence, R.I., authorizing the transportation of: Highway construction materials, when moving in dump vehicles and unloaded at destination by dumping, between points in Rhode Island, on the one hand, and, on the other, described portions of Connecticut and Massachusetts. Joseph A. Kline, 31 Milk Street, Boston, MA 02109, applicant's attorney.

No. MC-FC-74100. By order of January 15, 1973, the Motor Carrier Board approved the transfer to BHY Trucking, Inc., Artesia, Calif., of the operating rights in No. MC-133055 (Sub-No. 1) issued September 9, 1971, to Sam Gordon, doing business as S. G. Trucking, Los Angeles, Calif., authorizing the transportation of gypsum plaster and gypsum wallboard, from Blue Diamond, Nev., to points in San Bernardino, Orange, Riverside, and Los Angeles Counties, Calif. Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010, attorney for applicants.

No. MC-FC-74129. By order of January 12, 1973, the Motor Carrier Board approved the transfer to Reese Trucking, Inc., Dover, Ohio, of the operating rights in Permit No. MC-135111 issued July 27, 1972, to Eugene F. Reese, Dover, Ohio, authorizing the transportation of adhesive cement, in containers, from New Philadelphia, Ohio, to points in Illinois, Indiana, Michigan, Kansas, Texas, Florida, Georgia, North Carolina, South Carolina, Virginia, Maryland, New Jersey, New York, Massachusetts, Pennsylvania, Delaware, Connecticut, Rhode Island, West Virginia, Iowa, and the District of Columbia; and materials and supplies, except in bulk used in the manufacture and distribution of adhesive cement, from points in South Carolina, Georgia, Kentucky, Texas, Illinois, Pennsylvania, New Jersey, Florida, and Mississippi, to New Philadelphia, Ohio. The operations authorized herein are limited to a transportation service to be performed under a contract with Miracle adhesives Corp. William J. Lavelle, 2310 Grant Building, Pittsburgh, Pa. 15219, attorney for applicants.

No. MC-FC-74147. By order of January 12, 1973, the Motor Carrier Board approved the transfer to F. J. Murphy, Wilmette, Ill., of Certificate of Registration No. MC-653 (Sub-No. 2) issued December 27, 1963, to F. J. Murphy, Inc., Wilmette, Ill., evidencing a right to engage in transportation in interstate commerce as described in Certificate of Public Convenience and Necessity No. 6648MC dated October 5, 1954, issued by the Illinois Commerce Commission; Themis N. Anastos, 120 West Madison Street, Chicago, IL 60602, attorney for applicants.

No. MC-FC-74152. By order of January 12, 1973, the Motor Carrier Board approved the transfer to Capital City Moving and Storage, Inc., Topeka, Kans., of the operating rights in Certificate No. MC-119629 issued September 23, 1960, to McCarter Truck Lines, Inc., Topeka, Kans., authorizing the transportation of meats, meat products, and articles distributed by packinghouses, (1) from Lawrence and Topeka, Kans., to Denver and Golden, Colo., and from Topeka, Kans., to Holly, Lamar, Las Animas, La Junta, Rocky Ford, Pueblo, and Colorado Springs, Colo., restricted to shipments moving from and to warehouses, plants, or other facilities of meat packinghouses; (2) between Topeka, Kans., on the one hand, and, on the other, points in Kansas (except Wichita), restricted to service, in refrigerated equipment, for the distribution of rail pool-car traffic; (3) from Topeka, Kans., to points in Kansas (except Wichita), restricted to the distribution of pool-truck shipments, and empty containers or other such incidental facilities used in transporting the above-specified commodities, from points in Kansas (except Wichita) to Topeka, Kans. Gene E. Schroer, Suite A, Downtown Professional Building, 115 East Seventh Street, Topeka, KS 66603, attorney for applicants.

No. MC-FC-74179. By order entered January 16, 1973, the Motor Carrier Board approved the transfer to Crewe Transfer, Inc., Crewe, Va., of the operating rights set forth in Certificates Nos. MC-36222, MC-36222 (Sub-No. 3), MC-36222 (Sub-No. 4), MC-36222 (Sub-No. 9), MC-36222 (Sub-No. 10), and MC-36222 (Sub-No. 11), issued by the Commission August 31, 1949, November 18, 1960, August 29, 1963, Decembr 15, 1967, November 14, 1967, and June 12, 1968, respectively, to John L. Fanshaw, Jr., doing business as Crewe Transfer, Crewe, Va., authorizing the transportation of general commodities, with the usual exceptions, between Crewe, Va. and Richmond, Va., over specified routes, serving no intermediate points; between Richmond, Va., and Amelia, Va., over specified routes, serving all intermediate points; garments on hangers, from Nashville, N.C., to Crewe, Va.; and wearing apparel, and materials and supplies used in the manufacture of wearing apparel, between Crewe, Va., and Amelia, Va.; between Emporia and Lawrenceville, Va., on the one hand, and, on the other, Crewe, Va.; and between Crewe, Va., on the one hand, and, on the other, Whitakers, N.C. Calvin F. Major, 200 West Grace Street, Richmond, VA 23220, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-2485 Filed 2-7-73;8:45 am]

MOTOR SERVICE COMPANY, INC.

Decision and Order

[No. MC-117565 (Sub-No. 34)]

Motor Service Company, Inc., Extension—Ohio (Coshocton, Ohio).

Upon consideration of the application, as amended, and the record in the above-entitled proceeding, including the report and recommended order of the Administrative Law Judge, the exceptions filed by applicant, separately by Kenosha Auto Transport Corp., and National Trailer Convoy, Inc., protestants, and the reply thereto filed by applicant; and

It appearing, that the Administrative Law Judge recommended the granting to applicant of a certificate of public convenience and necessity authorizing the operation, as modified herein, described in the appendix to this order;

It further appearing, that in its reply applicant renews its objection to Kenosha's protest raised at the hearing; that the objection was properly overruled by the Administrative Law Judge; and that this matter will not be considered further;

It further appearing, that the Administrative Law Judge correctly determined that the commodity description "travel trailers" sought in part (3) of the application does not accurately describe the commodity to be shipped, and that it should have been "utility trailers"; that

he correctly found that it would be purposeless to grant part (3) as filed; but that he also determined that part (3) of the application could not be fairly amended, that it should not be granted subject to republication, and that it should be denied outright;

It further appearing, that part (3) of the application as filed is unopposed; that it should be amended to correctly describe the commodity sought to be shipped; that authority to transport utility trailers should be granted; and that since other parties, who have relied on the notice of the application as published, may have an interest in and would be prejudiced by a lack of proper notice of authority to transport utility trailers, a notice of the authority actually granted, as described in the appendix below, will be published in the FEDERAL REGISTER, and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding, setting forth in detail the precise manner in which it has been prejudiced;

And it further appearing, that otherwise the pleadings raise no new or material matters of fact or law not adequately considered and properly disposed of by the Administrative Law Judge in his report, and are not of such nature as to require the issuance of a report discussing the evidence in the light of the pleadings;

Wherefore, and good cause appearing therefor:

We find, that the findings of the Administrative Law Judge should be, and they are hereby, modified to reflect the grant of authority described in the appendix below.

And we further find, that otherwise the evidence considered in the light of the pleadings does not warrant a result different from that reached by the Administrative Law Judge, except as noted above; that the statement of facts, the conclusions, and the findings of the Administrative Law Judge, as modified herein, being proper and correct in all material respects, should be, and they are hereby, affirmed and adopted as our own; and that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969;

It is ordered, that upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act and with the Commission's rules and regulations thereunder, within the time specified in the next succeeding paragraph, an appropriate certificate will be issued, subject to prior publication in the FEDERAL REGISTER, as hereinabove provided, of a notice of the authority actually granted in this decision and order.

And it is further ordered, that unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Act on or before May 3, 1973, or within such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Review Board No. 3, members Bilodeau, Beddow, and Fortier.

[SEAL] ROBERT L. OSWALD, *Secretary.*

APPENDIX

No. MC-117565 (Sub-No. 34) Motor Service Company, Inc., Extension-Ohio (Coshocton, Ohio).

Service authorized. Operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, (1) of all-terrain vehicles and parts, accessories, and attachments therefor, from points in Huron County, Ohio, to points in the United States (except Hawaii); (2) of trailers designed to be drawn by passenger automobiles, in initial movements, from Mason, Ohio, to points in Michigan, Indiana, Kentucky, West Virginia, and Pennsylvania; and (3) of utility trailers designed to be drawn by passenger automobiles, in initial movements, from points in Mahaska County, Iowa, to points in the United States (except Hawaii).

Condition. That issuance of the certificate authorized herein shall be withheld for a period of 30 days from the date of publication in the FEDERAL REGISTER of a notice of the authority actually granted.

[FR Doc.73-2482 Filed 2-7-73;8:45 am]

[No. 19610]

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT

Order

FEBRUARY 2, 1973.

Upon further consideration of the record in the above-captioned proceeding and the petition filed on November 1, 1972, by the Elgin, Joliet and Eastern Railway Co. for modification of the order entered herein on July 31, 1931 (177 ICC 669), July 3, 1933 (195 ICC 89), and June 5, 1967 (not printed); and

It appearing, that no reply in opposition to the requested action has been filed;

And it further appearing, that the modification sought is necessary to meet the competition of private and other unregulated transportation; and that the rates sought to be established would be compensatory and would produce revenues comparable to those which are produced by the presently authorized scale of rates;

Wherefore, and for good cause:

It is ordered, That the petition be, and it is hereby, granted; and that petitioner be, and it is hereby, authorized to establish no earlier than 30 days from the date of publication of this order in the FEDERAL REGISTER, and upon not less than 10 days' notice to this Commission and to the general public by filing and posting in the manner prescribed under section 6 of the act, "including compliance with pertinent outstanding special permission or a request for special permission, if appropriate," and thereafter to maintain and to apply rates ranging from 103 to 356 cents, subject to the conditions set forth in the petition, on lime, common, quick, hydrated, or slaked, in bulk, in covered hopper cars, from Buffington, Ind., to South Chicago, Ill., and intermediate points.

It is further ordered, That the outstanding orders in this proceeding, as subsequently and as herein modified, shall remain in full force and effect until the further order of the Commission.

And it is further ordered, That a copy of this order be delivered to the Director, Office of the Federal Register, for publication therein.

This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-2481 Filed 2-7-73;8:45 am]

[Notice 11]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

FEBRUARY 2, 1973.

The following applications (except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approved of its application), are governed by Special Rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission on or before March 12, 1973. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with § 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of § 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and on or before April 9, 1973, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 151 (Sub-No. 48), filed December 18, 1972. Applicant: LOVELACE TRUCK SERVICE, INC., 2225 Wabash Avenue, Terre Haute, IN 47807. Applicant's representative: Ferdinand Born, 601 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Lawn and garden products*, including grass seeds, fertilizer compounds, manufactured fertilizer, weed-killing compounds, and insecticides or fungicides (other than liquid), in boxes or bags; distributor carts, weed-killing compounds (nonflammable compressed gas, green label required), in boxes; wheeled fertilizer distributors, K.D.; grasscatchers; hand lawnmowers without engine or motor; agricultural implement parts (other than hand); turf aerators; lawn sprinklers (metal with wheels); and fertilizer compound (manufactured fertilizers) when admixed with fungicides, herbicides or insecticides, serving the plantsites, warehouses and other facilities of O. M. Scott & Sons Co., Inc., at or near Marysville, Ohio, as an off-route point in connection with carrier's authorized regular route operations to serve points in Illinois, Indiana, and Missouri. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Columbus, Ohio.

No. MC 2202 (Sub-No. 430), filed December 8, 1972. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Applicant's representative: James W. Conner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (except those commodities which because of size or weight require the use of special equipment and those commodities, described in Mercer Extension—Oil Field Commodities, 74 M.C.C. 459 and 543), from Lone Star, Tex., to points in Iowa, Illinois, and Tennessee. NOTE: Applicant states that the requested authority can be tacked with its existing authority and intends to tack wherever possible to provide service to all authorized areas, but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Washington, D.C.

No. MC 5470 (Sub-No. 70), filed January 3, 1973. Applicant: TAJON, INC., Rural Delivery 5, Box 146, Mercer, PA 16137. Applicant's representative: Donald E. Cross, 918 16th Street NW., Suite 700, Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coke and pig iron*, in dump vehicles, from Pittsburgh, Pa., to points in Connecticut, Indiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island, Virginia, and West Virginia. NOTE: Applicant states that joinder of the requested authority and its existing authority is possible at such points as East Liverpool, Ohio, Newark, N.J., Niagara Falls and Buffalo, N.Y., and serve points in Illinois, Delaware, Pennsylvania, New Hampshire, and Vermont. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 8310 (Sub-No. 7), filed December 27, 1972. Applicant: JEFF'S TRUCKING, INC., 408½ East Main Street, Waupun, WI 53963. Applicant's representative: Nancy J. Johnson, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs and materials, equipment and supplies* used in the canning industry (except commodities in bulk, in tank or hopper type vehicles), from points in Washington, Dodge, Dane, Green Lake, and Trempealeau Counties, Wis., to points in Wisconsin, restricted to traffic destined to points in Wisconsin. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison or Milwaukee, Wis.

No. MC 9325 (Sub-No. 62), filed December 26, 1972. Applicant: K LINES, INC., Post Office Box 1348, Lake Oswego, OR 97034. Applicant's representative: Eugene A. Freise (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxide* (Litharge), in bulk, in pneumatic hopper equipment, from Seattle, Wash., to points in Oregon. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

No. MC 11207 (Sub-No. 323), filed December 26, 1972. Applicant: DEATON, INC., 317 Avenue W., Post Office Box 938, Birmingham, AL 35201. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe and fittings*, from the plantsite and warehouse facilities of Kyle-Gifford-Hill, Inc., at or near Newberry, Fla., to points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and (2) *materials used in the manufacture and installation of plastic pipe* (except commodities in bulk), from points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia to the plantsite and warehouse facilities of Kyle-Gifford-Hill, Inc., at or near Newberry, Fla. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Birmingham, Ala.

No. MC 11610 (Sub-No. 13), filed December 29, 1972. Applicant: CANADA TRANSPORT, INC., Post Office Box 271, Norfolk, NE 68701. Applicant's representative: Richard A. Peterson, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except groceries, beer, liquors, and fruit); (1) between points within a 30-mile radius of Eustis, Nebr.; and (2) between points within said radial area on the one hand, and, on the other, points in Nebraska. NOTE: The purpose of this application is to convert the certificate of registration issued to Platte Valley Transport Co. in No. MC 97321 (Sub-No. 1) to a certificate of public convenience and necessity. An application for approval of the purchase of that certificate of registration by Canada Transport, Inc., is pending in

No. MC-FC-74091, therefore applicant requests concurrent handling. Common control may be involved. Applicant states that the requested authority can be tacked at points within 30 miles of Eustis, Nebr., with the authority it presently holds in No. MC 11610, thereby providing for the transportation of petroleum products to points in Nebraska. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 14125 (Sub-No. 7), filed December 15, 1972. Applicant: PIQUA TRANSFER & STORAGE CO., a corporation, 524 Young Street, Piqua, OH 45356. Applicant's representative: James W. Muldon, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, complete, knocked down, or in sections, and *component parts, materials, supplies and fixtures* used in the erection or assembly thereof, between the plantsite of Inland Homes, Division of Inland Systems, Inc., at Piqua, Ohio, on the one hand, and, on the other, points in the United States located in and east of Minnesota, Iowa, Missouri, Arkansas, and Louisiana. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio or Washington, D.C.

No. MC 16965 (Sub No. 6), filed December 11, 1972. Applicant: FRANKLIN TRUCKING, INC., Post Office Box 412, Hartford City, IN 47348. Applicant's representative: Donald W. Smith, 900 Circle Tower, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsite of Weyerhauser Co. at Columbus, Ind., to Cincinnati, Ohio and Louisville, Ky., under contract with Weyerhauser Co. Restriction: Restricted to traffic originating at the plantsite of Weyerhauser Co. at Columbus, Ind., and destined to Cincinnati, Ohio, and Louisville, Ky. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 19105 (Sub-No. 37), filed December 4, 1972. Applicant: FORBES TRANSFER COMPANY, INC., 301 A Highway South, Wilson, N.C. 27893. Applicant's representative: Vaughan S. Winborne, 1108 Capital Club Building, Raleigh, N.C. 27601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber byproducts, and composition board*, between points in Virginia, North Carolina, and South Carolina. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Raleigh or Wilmington, N.C.

No. MC 19227 (Sub-No. 178), filed December 22, 1972. Applicant: LEONARD BROS. TRUCKING CO., INC., 2595 Northwest 20th Street, Miami, FL 33152. Applicant's representatives: J. F. Dewhurst (same address as applicant) and William O. Turney, 2001 Massachusetts Avenue, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, which because of size or weight require specialized handling or the use of special equipment (except airplanes, airplane parts, and oilfield equipment), between points in Alabama, Georgia, and South Carolina, on the one hand, and, on the other, points in Texas. NOTE: Common control may be involved. Applicant states that this request for authority seeks to eliminate a Florida Gateway by tacking a portion of the authority it presently holds in MC 19227 to transport the above-named commodities between points in Florida, on the one hand, and, on the other, points in Alabama, Georgia, and South Carolina, with the authority it presently holds in MC 19227 (Sub-No. 43) to transport the above-named commodities between points in Florida, on the one hand, and, on the other, points in Texas. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 21455 (Sub-No. 30), filed December 18, 1972. Applicant: GENE MITCHELL CO., a corporation, 1106 Division Street, West Liberty, IA 52776. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precut buildings, materials, and hardware* (except liquid in bulk), (1) from Scranton, Pa., to points in Alabama, Connecticut, Delaware, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, and (2) from Schererville, Ind., to points in Arkansas, Georgia, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Pittsburgh, Pa.

No. MC 27754 (Sub-No. 18), filed December 15, 1972. Applicant: FRANK J. KUBLY TRANSFER, INC., 1202 19th Street, Monroe, WI 53566. Applicant's representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cheese*, from points in Buchanan, Clinton, Delaware, Jackson, Jones, Clayton, Linn, and Winneshiek Counties, Iowa, to Monroe, Wis., and *cheese factory supplies* on return; (2) *Cheese*, between Monroe and Beloit, Wis., on the one hand, and, on the other, points in Wisconsin, restricted in interline shipments having a prior or subsequent movement in interstate commerce. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison or Milwaukee, Wis.

No. MC 31389 (Sub-No. 161), filed November 29, 1972. Applicant: McLEAN TRUCKING CO., a corporation (Bruce E. Yeakel, Trustee in Bankruptcy), 617 Waughtown Street (Post Office Box No. 213), Winston-Salem, NC 27102. Applicant's representative: Francis W. McInerny, 1000 Sixteenth Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring the use of special equipment), serving the plantsite of the CLECO Power Plant, at or near Zimmerman, La., as an off-route point in connection with applicant's regular-route operations to and from Alexandria, La. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New Orleans, La.

No. MC 35628 (Sub-No. 341), filed December 18, 1972. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville, SW., Grand Rapids, MI 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, MI 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk and those requiring special equipment), serving the plantsite of Teledyne Still-Man Manufacturing at or near Lakewood, N.J., as an off-route point in connection with applicants presently authorized operations to and from Trenton, N.J. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 35628 (Sub-No. 342), filed January 3, 1973. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a Corporation, 134 Grandville, SW., Grand Rapids, MI 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, MI 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat packing houses*, as described in appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the plantsite and storage facilities of Dubuque Packing Co. at Mankato, Kans., to points in Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio,

Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin, restricted to traffic originating at said plantsite and warehouse facilities and destined to points in the named States, and (2) from the plantsite and warehouse facilities of Dubuque Packing Co. at Dubuque, Iowa, to points in Arkansas, Colorado, Missouri, Nebraska, South Dakota, and Texas, restricted to traffic origination at said plantsite and warehouse facilities and destined to points in the named States. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Kansas City, Kans.

No. MC 35807 (Sub-No. 28), filed October 12, 1972. Applicant: WELLS FARGO ARMORED SERVICE CORP., 210 Baker Street NW., Atlanta, GA 30313. Applicant's representative: Harry Jordan, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, bullion, gold, silver, negotiable and nonnegotiable securities and other valuables* in armored cars accompanied by armed guards, between Savannah, Ga., on the one hand, and, on the other, points in Hampton, Jasper, and Beaufort Counties, S.C., under continuing contract or contracts with banks and banking institutions. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 40757 (Sub-No. 15), filed November 22, 1972. Applicant: CREECH BROTHERS TRUCK LINES, INC., 100 Industrial Drive, Troy, MO 63379. Applicant's representative: William H. Creech, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm tractors, farm implements*, and related parts, between the warehouse site of Deutz Tractor Corp. located at or near O'Fallon, Mo., on the one hand, and, on the other, points in Minnesota, Nebraska, and Wisconsin. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis or Jefferson, Mo.

No. MC 47149 (Sub-No. 16), filed December 26, 1972. Applicant: C. D. AMBROSIA TRUCKING CO., a Corporation, Rural Route No. 1, Edinburg, PA 16116. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Limestone* and *limestone products*, from Mahoning Township, Lawrence County, Pa., to points in Cuyahoga, Franklin, Geauga, Lake, Licking, Lorain, Muskingum, Summit, and Wayne Counties, Ohio. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. MC 50307 (Sub-No. 62), filed December 5, 1972. Applicant: INTERSTATE DRESS CARRIERS, INC., 247 West 35th Street, New York, NY 10001. Applicant's representative: Herbert Burstein, One World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials, and supplies and equipment used in the manufacture thereof*, between the New York, N.Y. Commercial Zone, on the one hand, and, on the other, Edinburg, Va. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 50493 (Sub-No. 52), filed December 11, 1972. Applicant: P. C. M. TRUCKING, INC., 1063 Main Street, Orefield, PA 18069. Applicant's representative: J. William Cain, Jr., 2001 Massachusetts Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fishmeal*, dry, in bulk, from Port Monmouth, N.J. to points in Indiana and Ohio. NOTE: Applicant holds a motor contract carrier permit in No. MC 115859 and subs thereunder, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 51146 (Sub-No. 306), filed December 18, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54304. Applicant's representatives: Neil DuJardin, Post Office Box 2298, Green Bay, WI 54306, and Charles Singer, Suite 100, 327 South LaSalle Street, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Chippewa Falls and Eau Claire, Wis. to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Lower Peninsula of Michigan, Indiana, Kentucky, Tennessee, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and the District of Columbia. NOTE: Common control may be involved. Applicant states it does not seek duplicating authority. Applicant further states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 52460 (Sub-No. 119), filed January 5, 1973. Applicant: HUGH BREEDING, INC., 1420 West 35th Street, Tulsa, OK 74107. Applicant's representative: Steve B. McCommas (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transportings: *Animal and poultry feed ingredients*, from (1) Springfield and Verona, Mo., to points in the States of Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, Tennessee, and Texas, and (2) Chattanooga, Tenn., to points in the States of Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis or Kansas City, Mo., or Chattanooga, Tenn.

No. MC 52657 (Sub-No. 695), filed January 3, 1973. Applicant: ARCO AUTO CARRIERS, INC., 2140 West 79th Street, Chicago, IL 60620. Applicant's representative: A. J. Bieberstein, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, trailer chassis* (except trailers and trailer chassis designed to be drawn by passenger automobiles), and *trailer converter dollies* in initial movements in truckaway service, from Enterprise, Ala., to points in the United States, including Alaska, but excluding Hawaii; (2) *trailers, trailer chassis* (except trailers and trailer chassis designed to be drawn by passenger automobiles), and *trailer converter dollies* in secondary movements in truckaway service; (3) *motor vehicle bodies, hoists* including *freight gates, lift gates, tail gates; winches; packers and containers*; and (4) *materials, supplies* (except commodities in bulk) and *parts* used in the manufacture, assembly or servicing of commodities described in paragraphs (1), (2), and (3) above when moving with such commodities, between Enterprise, Ala., on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 52657 (Sub-No. 696), filed January 3, 1973. Applicant: ARCO AUTO CARRIERS, INC., 2140 West 79th Street, Chicago, IL 60620. Applicant's representative: A. J. Bieberstein, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, trailers chassis* (except trailer and trailer chassis designed to be drawn by passenger automobiles), and *trailer converter dollies* in initial movements in truckaway service, from Minden, La., to points in the United States, including Alaska, but excluding Hawaii; (2) *trailer, trailer chassis* (except trailers and trailer chassis designed to be drawn by passenger automobiles) and *trailer converter dollies* in secondary movements in truckaway service; (3) *motor vehicle bodies, hoists including freight gates, lift gates, tail gates, winches, packers, and con-*

tainers; and (4) *materials, supplies* (except commodities in bulk), and *parts* used in the manufacture, assembly or servicing of commodities described in paragraphs (1), (2), and (3) above when moving with such commodities, between Minden, La., on the one hand, and on the other, points in the United States, including Alaska, but excluding Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 52704 (Sub-No. 95), filed January 3, 1973. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., Post Office Drawer H, LaFayette, AL 36862. Applicant's representative: Robert E. Tate, Post Office Box 517, Evergreen, AL 36401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products, and woodpulp* (except in bulk), from the plantsite of Bowaters Southern Paper Corp. at Calhoun, Tenn., to points in Alabama, North Carolina, South Carolina, and Virginia, and (2) *materials and supplies* used in the manufacture of paper, paper products, and woodpulp (except in bulk), from points in Alabama, North Carolina, South Carolina, and Virginia to the plantsite of Bowaters Southern Paper Corp. at Calhoun, Tenn. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Atlanta, Ga.

No. MC 59117 (Sub-No. 40), filed December 26, 1972. Applicant: ELLIOTT TRUCK LINE, INC., 101 East Excelsior, Post Office Box 1, Vinita, OK 74301. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 Northwest 58th, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer and dry fertilizer ingredients,* from Muskogee, Okla., to points in Kansas and Nebraska and (2) *Feed ingredients,* in bulk, between points in Oklahoma, on the one hand, and, on the other, points in Kansas and Nebraska. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Tulsa or Oklahoma City, Okla.

No. MC 59488 (Sub-No. 37), filed November 27, 1972. Applicant: SOUTHWESTERN TRANSPORTATION COMPANY, a corporation, 7600 South Central Expressway, Dallas, TX 75216. Applicant's representative: Lloyd M. Roach, 1517 West Front Street, Tyler, TX 75701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Mount Pleasant, Tex., and site of Monticello Fuel Facilities in Titus County, Tex., from Mount Pleasant west for approximately 7 miles on U.S. Highway 67 to junction with Farm-to-Market Road 1734, thence approximately 2 miles to access roads to site of Monticello Fuel Facilities in Titus County, Tex., and return over the same route in connection with applicant's authority to serve Mount Pleasant, Tex., coordinating such service with that rendered under all other authority; also from Mount Pleasant northwest over U.S. Highway 271 and Farm-to-Market Road 1734 to access roads to site of Monticello Fuel Facilities in Titus County, Tex., and return over the same route as an off-route point in connection with applicant's authority to serve Mount Pleasant, Tex., coordinating such service with that rendered under all other authority. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 61955 (Sub-No. 18), filed January 3, 1972. Applicant: CENTROPOLIS TRANSFER CO., INC., 6700 Wilson Avenue, Kansas City, MO 64125. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cement,* from the Ash Grove Cement Co. plant and/or storage facilities located at or near Chanute, Kans., and Kansas City, Kans., to points in Arkansas, Oklahoma, and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 71883 (Sub-No. 6), filed December 27, 1972. Applicant: JACKSON TRUCKING, INC., Box 786, 89 River Street, Jamestown, NY 14701. Applicant's representative: William J. Hirsch, Suite 444, 35 Court Street, Buffalo, NY 14202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat byproducts,* and *articles distributed by meat packinghouses* as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from Jamestown, N.Y., to points in Crawford County, Pa., and those in Erie County, Pa., on and west of Pennsylvania Highway 8, and returned shipments on return; and (2) *foodstuffs,* in vehicles equipped with mechanical refrigeration devices, from Jamestown, N.Y., to points in Allegany, Cattaraugus, and Chautauqua Counties, N.Y., and those in Cameron, Crawford, Elk, Erie, Forest, McKean, Potter, and Warren Counties, Pa., and returned shipments on return, under a continuing contract, or contracts, in (1) and (2) above with Geo. A. Hormel & Co., of Austin, Minn. NOTE: If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 72243 (Sub-No. 33), filed December 29, 1972. Applicant: THE AETNA FREIGHT LINES, INCORPORATED, 2507 Youngstown Road SE., Post Office Box 350, Warren, OH 44482. Applicant's representative: Einar Viren, 904 City National Bank Building, Omaha, NE 68102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bulkheads and bulkhead accessories* from points in Douglas County, Nebr., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 73165 (Sub-No. 317), filed December 29, 1972. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Post Office Box 11086, Birmingham, AL 35202. Applicant's representative: Carl U. Hurst, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Particleboard,* from the plantsite of Temple Industries, Inc., at or near Thomson, Ga., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington, D.C.

No. MC 73688 (Sub-No. 59), filed December 19, 1972. Applicant: SOUTHERN TRUCKING CORPORATION, 1500 Orenda Avenue, Post Office Box 7182, Memphis, TN 38107. Applicant's representative: Charles H. Hudson, Jr., 601 Stahlman Building, Nashville, Tenn. 37201. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic and/or cast iron pipe and fittings,* in straight or mixed shipments, from the plantsite and storage facilities of Central Foundry Co., at Holt, Ala., to the States of Missouri, Kentucky, West Virginia, North Carolina, Virginia, South Carolina, Georgia, Florida, Mississippi, Louisiana, Texas, Tennessee, Arkansas, and Oklahoma. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 74321 (Sub-No. 68), filed December 29, 1972. Applicant: B. F. WALKER, INC., 650 17th Street, Denver, CO 80202. Applicant's representative:

Richard P. Kissinger (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, wrought iron and steel*, other than oilfield, from the plantsite and warehouse facilities of Proler Steel Corp. at Milwaukee, Wis., and Lemont, Ill., to points in California, Georgia, Indiana, Iowa, Kansas, Kentucky, Missouri, Montana, North Carolina, North Dakota, Nebraska, Ohio, South Carolina, South Dakota, Tennessee, Virginia, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston, Tex.

No. MC 82063 (Sub-No. 43), filed January 4, 1973. Applicant: KLIPSCH HAULING CO., a corporation, 119 East Loughborough, St. Louis, MO 63111. Applicant's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from points in the Kansas City, Mo.-Kansas City, Kans., commercial zone to points in Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, Wyoming, Mississippi, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Washington, D.C.

No. MC 82079 (Sub-No. 29), filed December 15, 1972. Applicant: KELLER TRANSFER LINE, INC., 1239 Randolph Avenue SW., Grand Rapids, MI 49507. Applicant's representative: J. M. Neath, Jr., 900 One Vandenberg Center, Grand Rapids, MI 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and food products* requiring transportation in mechanically refrigerated equipment, from the plant and warehouse sites of Continental Freezers of Illinois at Chicago, Ill., and Kitchens of Sara Lee at Deerfield, Ill., to points in Michigan, and *returned shipments of damaged or rejected merchandise* on return. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Lansing, Mich., or Chicago, Ill..

No. MC 82841 (Sub-No. 106), filed December 29, 1972. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles*, from Portage, Ind., to points in Colorado, Nebraska, Iowa, Kansas, and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 82841 (Sub-No. 107), filed January 2, 1973. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Particleboard, flakeboard, and hardboard*, from points in California to points in Arizona, Utah, Wyoming, Colorado, New Mexico, Texas, Oklahoma, Kansas, and Nebraska. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 85465 (Sub-No. 54), filed December 5, 1972. Applicant: WEST NEBRASKA EXPRESS, INC., Post Office Box 952, Scottsbluff, NE 69361. Applicant's representative: Truman A. Stockton, The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Mankato, Kans., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Kans., or Washington, D.C.

No. MC 100666 (Sub-No. 232), filed December 11, 1972. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 3535 Northwest 58th, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials, gypsum and gypsum products, composition boards, insulation materials, urethane and urethane products, and accessories* used in the installation of the abovementioned products from the plantsite and warehouse facilities of The Celotex Corp. located in Wayne County, N.C., to points in Alabama, Mississippi, Louisiana, Arkansas, Missouri, Illinois, Indiana, and Tennessee. NOTE: Applicant states that it can tack with its Sub-1 at any point in Louisiana or Arkansas within 250 miles of Texarkana, Tex., and transport roofing to all points in Texas, Oklahoma, and Kansas. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or New Orleans, La.

No. MC 100666 (Sub-No. 233), filed December 11, 1972. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 3535 Northwest 58th, 280 National Foundation Life, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and siding*, from the plantsite and warehouse facilities of G.A.F. Corp. at St. Louis, Mo., to points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Shreveport, La.

No. MC 100666 (Sub-No. 234), filed December 11, 1972. Applicant: MELTON TRUCK LINES, INC. Post Office Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 3535 Northwest 58th, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Hope, Ark., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that while certain tacking might technically be possible, applicant would not consider such operations to be feasible nor does it have any present intention of engaging in such operations. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Shreveport, La.

No. MC 102567 (Sub-No. 160), filed December 12, 1972. Applicant: EARL GIBBON TRANSPORT, INC., 4295 Meadow Lane (Post Office Drawer 5375), Bossier City, LA 71010. Applicant's representative: Jo E. Shaw, 816 Houston First Savings Building, Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum wax*, in bulk, in tank vehicles, from Beaumont, Tex., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Ver-

mont, Virginia, and West Virginia. NOTE: Applicant states that the requested authority can be tacked with its existing authority in MC 102567 section (A) authorizing transportation of petroleum products between points in Texas, Arkansas, and Louisiana within 150 miles of Henderson, Tex. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Houston, Tex.

No. MC 103051 (Sub-No. 264), filed December 11, 1972. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Avenue North, Post Office Box 90408, Nashville, TN 37209. Applicant's representative: Gregory A. Presnell, Post Office Box 231, 17th Floor, CNA Building, Orlando, FL 32802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oil and/or animal fats*, in bulk, in tank vehicles, from Chattanooga, Tenn., to Milwaukee, Wis. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority from South Carolina to Chattanooga, Tenn. (Sub 56), from North Carolina to Chattanooga, Tenn. (Sub 58), from Georgia to Tennessee (by tacking Sub 76 at Chattanooga), from Alabama and Mississippi to Hamilton County, Tenn. (Sub 77), and from Orangeburg, S.C., to points in Georgia (Sub 85), then to Tennessee by tacking with Sub 76 noted above. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., Orlando, Fla., or Atlanta, Ga.

No. MC 103051 (Sub-No. 265), filed December 11, 1972. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Avenue North, Post Office Box 90408, Nashville, TN 37209. Applicant's representative: Gregory A. Presnell, Post Office Box 231, 17th Floor, CNA Building, Orlando, FL 32802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, in bags, blocks, packages and in bulk, in dump vehicles, from Cairo, Ga., to points in Alabama and Florida. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn., Orlando, Fla., or Atlanta, Ga.

No. MC 106497 (Sub-No. 76), filed January 4, 1973. Applicant: PARKHILL TRUCK COMPANY, a corporation, Post Office Box 912 (Business Route I-44 East), Joplin, MO 64810. Applicant's representative: A. N. Jacobs, Post Office Box 113, Joplin, MO 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and tubing*, from the plantsite and facilities of United Tube Corp., at New Orleans, La., to points in the United States (except Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Washington, D.C.

No. MC 106674 (Sub-No. 100), filed November 17, 1972. Applicant: SCHILLI MOTOR LINES, INC., Post Office Box 122, Delphi, IN 46923. Applicant's representative: Axelrod, Goodman, Steiner & Bazelon, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared roofing, prepared roofing materials, and commodities used or useful in the construction of roofs, and floor tile, asphalt composition and materials useful in the installation thereof*, from Chicago Heights, Ill., to points in that part of Indiana on and south of U.S. Highway 30 and to points in that part of Ohio from the Indiana-Ohio State line along U.S. Highway 30 to junction U.S. Highway 23, thence southerly along U.S. Highway 23 to the Ohio-Kentucky State line, thence along the Ohio-Kentucky border to the Indiana-Ohio-Kentucky border, thence northerly along the Ohio-Indiana State line to the point of beginning, including points on the indicated portions of the highways specified. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107010 (Sub-No. 47), filed December 22, 1972. Applicant: BULK CARRIERS, INC., Post Office Box 423, Auburn, NE 28305. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, fertilizer material, and ammonium nitrate*, in bulk, or in bags, from Farmland Industries, Inc., plantsite or warehouse located at or near Hastings, Nebr., to points in Colorado, Kansas, South Dakota, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 107107 (Sub-No. 425), filed December 22, 1972. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 Northwest 42nd Avenue (Le Jeune Road), Opa Locka, FL 33054. Applicant's representative: Ford W. Sewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods and foodstuffs and related advertising and promotional materials* when moving with such commodities, from points in Morris County, N.J., to points in Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 107460 (Sub-No. 42), filed January 2, 1973. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Accessories, parts, supplies, and materials used in the manufacture of aluminum plate and sheet* (except aluminum scrap and commodities in bulk), from points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, to the plantsites of Howmet Corp. located in Lancaster County, Pa., under contract with Howmet Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Harrisburg, Pa.

No. MC 107818 (Sub-No. 66), filed December 20, 1972. Applicant: GREENSTEIN TRUCKING COMPANY, a corporation, 280 Northwest 12th Avenue, Post Office Box 608, Pompano Beach, Fla. 33061. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), from St. Louis, Mo., and its commercial zone, to points in Florida, Georgia, Alabama, Kentucky, Tennessee, South Carolina, North Carolina, Virginia, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 108207 (Sub-No. 365), filed November 24, 1972. Applicant: FROZEN FOOD EXPRESS, INC., a corporation, 318 Cadiz Street, Dallas, TX 75222. Applicant's representative: Ralph W. Pulley, Jr., 455 First National Bank Building, Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from points in Wisconsin to points in California, Arizona, New Mexico, Texas, Louisiana, Mississippi, Arkansas, Oklahoma, Kansas, Nebraska, Missouri, Tennessee, Iowa, and Illinois. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 108380 (Sub-No. 84), filed January 4, 1973. Applicant: JOHNSTON'S FUEL LINERS, INC., Post Office Box 100, Newcastle, WY 82701. Applicant's representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Coal tar products*, from points in Utah County, Utah, to points in South Dakota west of the Missouri River. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Des Moines, Iowa.

No. MC 109538 (Sub-20) (Amendment), filed October 16, 1972, published in the FEDERAL REGISTER issue of November 30, 1972, and republished in part, as amended, this issue. Applicant: CHIPPEWA MOTOR FREIGHT, INC., Post Office Box 269, Eau Claire, WI 54701. Applicant's representative: Nancy J. Johnson, 4506 Regent, Suite 100, Madison, WI 53705. NOTE: The purpose of this partial republication is to reflect that applicant will not serve any intermediate points, in lieu of serving all intermediate points as shown in previous publication. The rest of the application remains as previously published.

No. MC 109634 (Sub-No. 4), filed November 27, 1972. Applicant: TRAILER CONVOY, INC., 6606 Concord Hill Road, Louisville, KY 40228. Applicant's representative: Ollie L. Merchant, Suite 202, 140 South Fifth Street, Louisville, KY 40202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, semitrailers and trailer chassis*, from Louisville, Ky., to points in Colorado, Delaware, Idaho, Maine, Mississippi, Montana, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming, under continuing contract with Kentucky Manufacturing Co., R. C. Tway Co., Inc., owners. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky.

No. MC 110683 (Sub-No. 91), filed December 15, 1972. Applicant: SMITH'S TRANSFER CORPORATION, Post Office Box 1000, Staunton, VA 24401. Applicant's representative: Harry J. Jordan 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery goods*, between Pottstown, Pa., and Portsmouth, Va. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Philadelphia, Pa.

No. MC 111103 (Sub-No. 41), filed December 22, 1972. Applicant: PROTECTIVE MOTOR SERVICE COMPANY, INC., 12415 South Swanson Street, Philadelphia, PA 19148. Applicant's representatives: John M. Delany, 2 Nevada Drive, Lake Success, NY 11040 and Russell S. Bernhard, 1625 K Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precious metals, metal articles, foreign coin, jewelry, articles of unusual value and materials* used in the production of these commodities, between Franklin Center, Pa., on the one hand, and, on the other, Greenfield and Attleboro, Mass.; Farmingdale and Hauppauge, N.Y.; Meriden, Conn.; and Providence, R.I., under a continuing contract, or contracts, with the General Services Administration. NOTE: Common control may be involved. Applicant presently holds a motor common carrier certificate in No. MC 133698 and Subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa. or Washington, D.C.

No. MC 111302 (Sub-No. 71), filed December 29, 1972. Applicant: HIGHWAY TRANSPORT, INC., Post Office Box 10470, Knoxville, TN 37919. Applicant's representative: Paul E. Weaver, 1940 Monroe Drive NE., Post Office Box 1636, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Nitrogen fertilizer solutions or other liquid fertilizer solutions*, in tank vehicles, from Tyner, Tenn., to points in Kentucky and (2) *Fertilizer dry*, in bags or bulk, from Tyner, Tenn., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Virginia, and Tennessee. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chattanooga or Knoxville, Tenn.

No. MC 111729 (Sub-No. 369), filed December 18, 1972. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit, and accounting media* of all kinds, between Madison, Wis., on the one hand, and, on the other, Gary, South Bend, Terre Haute, Ind.; Bloomington, Joliet, Springfield, Ill.; Cincinnati and Columbus, Ohio; and (2) *biological laboratory samples, blood specimens, serum specimens, and business papers, records, and accounting media* moving therewith, between Morristown, N.J., on the one hand, and, on the other, Boston, Mass., and Providence, R.I. NOTE: Applicant holds contract carrier authority under MC 112750 and Subs thereto, therefore dual operations may be involved. A portion of the requested authority could be tacked with certain existing authorities. However, applicant does not, at present, have any intentions to tack. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Madison, Wis.

No. MC 112822 (Sub-No. 254), filed December 11, 1972. Applicant: BRAY LINES INCORPORATED, 1401 North Little (Post Office Box 1191), Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Table sauces, flavoring compounds, food sauce mixes, milk or cocoa compounds, and powdered whey*, from points in Minnesota and Wisconsin to points in Missouri and Texas. NOTE: Applicant states that there may be tacking possibilities but indicates that it has no intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held in Dallas, Tex., or Chicago, Ill.

No. MC 112822 (Sub-No. 256), filed December 29, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191 (1401 North Little), Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, from points in Missouri to points in Alabama, Arkansas, Florida, Georgia, Kansas, Kentucky, Illinois, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. NOTE: Applicant states that there may be tacking possibilities with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Chicago, Ill.

No. MC 112822 (Sub-No. 257), filed December 29, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little, Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Compounds, oils and greases, lubricating greases, and petroleum and petroleum products* as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in packages or containers only; (2) *such materials and supplies* as are used in automotive service centers, from Cincinnati, Ohio, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Pennsylvania, Tennessee, South Dakota, Virginia, West Virginia, and Wisconsin; and (3) *empty petroleum*

containers, between points in the above-named States. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention of tacking and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 113267 (Sub-No. 295), filed December 21, 1972. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, IL 62232. Applicant's representative: Lawrence A. Fischer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, chocolate confectionery and related articles*, from Chicago, Ill., commercial zone, to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 113362 (Sub-No. 251), filed December 18, 1972. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Applicant's representative: Milton D. Adams, 1105½ Eighth Avenue NE., Austin, MN 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Compound oils and greases, lubricating greases, and petroleum and petroleum products* as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in packages or containers only, from Cincinnati, Ohio, to points in Illinois, Indiana, Iowa, Kansas, Kentucky Michigan, Minnesota, Missouri, Nebraska, North Dakota, Pennsylvania, Tennessee, South Dakota, Virginia, West Virginia, and Wisconsin; (2) *such materials and supplies* as are used in the stock and trade of automotive service centers, from Cincinnati, Ohio, to those destination States named in (1) above; and (3) *empty petroleum containers*, between points in the above-named origin and destination States. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 113495 (Sub-No. 55), filed December 20, 1972. Applicant: GREGORY HEAVY HAULERS, INC., 51 Oldham Street, Post Office Box 60628), Nashville, TN 37206. Applicant's representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Transformers, and parts and accessories*, and (2) *materials, equipment and supplies* used in the manufacture of transformers, and parts and accessories (except commodities in bulk), between the plantsites of RTE-ASEA Corp. in Waukesha County, Wis., on the one hand, and, on the other, points in the United States including those in Alaska (but excluding Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., Milwaukee, Wis., or Washington, D.C.

No. MC 113678 (Sub-No. 475), filed December 15, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, from Robinson, Ill., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicated that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., Denver, Colo., or Washington, D.C.

No. MC 113678 (Sub-No. 476), filed December 27, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products and pizza ingredients* (such commodities as used in the manufacturing of pizzas), from (1) Chappel and Superior, Nebr., to Hutchinson and Wichita, Kans., and to all points in Tennessee, Georgia, and Florida, and (2) from Hutchinson and Wichita, Kans., to points in Tennessee, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., Omaha, Nebr., or Washington, D.C.

No. MC 113855 (Sub-No. 265), filed December 5, 1972. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Auhority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mechanical lifting equipment and attachments and parts for mechanical lifting equipment*, between Fulton County, Pa., on the one hand, and, on the other, points in the United States including those in Alaska (but excluding Hawaii). NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicated that it has no present intention to tack and therefore does no identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113855 (Sub-No. 266), filed December 15, 1972. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hay balers and attachments*, from Pella, Iowa, to points in the United States (except Alaska and Hawaii. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 113855 (Sub-No. 268), filed January 2, 1973. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe, tubing, and fittings for pipe and tubing; and equipment, supplies and material* used in the production and manufacture of pipe and tubing, between Tacoma, Wash., on the one hand, and, on the other, points in the United States (except Hawaii). NOTE: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash., or Portland, Oreg.

No. MC 114045 (Sub-No. 375), filed December 14, 1972. Applicant: TRANSCOLD EXPRESS, INC., Post Office Box 5342, Dallas, TX 75222. Applicant's representative: Arnold L. Burke, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream and ice*

cream confections, from Chicago, Ill. to points in Texas. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or Washington, D.C.

No. MC 114211 (Sub-No. 187), filed December 14, 1972. Applicant: WARREN TRANSPORT, INC., 324 Manhard Street, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Charles W. Singer, 2440 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wallboard, fiberboard, pulpboard, adhesive cement, plastic plate, fiberglass plate, fiberglass sheets, nails, eave filler strips, wood mouldings, aluminum flashings, mantels, shelves, brackets, beam (wood), trim, and hardware* for the above, from Farmingdale and Deer Park, N.Y. and Lodi, N.J., to points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority.

No. MC 114273 (Sub-No. 129), filed December 18, 1972. Applicant: CEDAR RAPIDS STEEL TRANSPORTATION, INC., Post Office Box 68, Cedar Rapids, IA 52406. Applicant's representative: Robert E. Konchar, Suite 315, Commerce Exchange Building, 2720 First Avenue NE., Cedar Rapids, IA 52402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, from Burlington, Iowa, to points in Ohio, Michigan, Indiana, Wisconsin, Illinois, North Dakota, South Dakota, Nebraska, Maryland, Pennsylvania, New Jersey, New York, Massachusetts, Connecticut, Kentucky, and Washington, D.C. NOTE: Applicant states that the requested authority cannot be tacked with its existing authoriy. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 114552 (Sub-No. 72), filed December 15, 1972. Applicant: SENN TRUCKING COMPANY, a corporation, Post Office Box 333, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wallboard, fiberboard, plywood, plasterboard, plastic sheeting, panelboard, wall and ceiling panels, tile, lumber products, molding, adhesives, and materials and accessories thereof*, from the plantsites and warehouse facilities of Barclay Industries located at Farmingdale and Deer Park, N.Y., and Lodi, N.J., to points in Alabama, Florida, Georgia, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 115078 (Sub-No. 6), filed December 19, 1972. Applicant: DONALD M. SINDALL AND GLENN J. YANTZI, a partnership, doing business as DON M. SINDALL TRANSPORT, 15 Lewis Road, Guelph, ON, Canada. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural, industrial, and construction machinery and equipment and attachments* for and equipment designed for use with such machinery and equipment; (2) *such machinery and equipment* as is dealt in by lawn and garden dealers and trailers designed for the transportation of such machinery; (3) *attachments, accessories, parts, and supplies* used in and for the manufacture, repair, and assembly of the items described in sections (1) and (2) above, from the facilities of the New Holland Division, Sperry Rand Corp., located at New Holland, Mountville, and Belleville, Pa., to ports of entry on the international boundary line between the United States and Canada, located at points in New York, New Hampshire, and Vermont, restricted to foreign commerce. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 115311 (Sub-No. 143), filed December 8, 1972. Applicant: J & M TRANSPORTATION CO., INC., Post Office Box 488, Milledgeville, GA 31061. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and pipe fittings, couplings, connections, and accessories* (except commodities which because of size or weight require the use of special equipment), from the plant or warehouse sites of Armco Steel Corp., Metal Products Division, in Montgomery County, Ala., to points in Arkansas, Colorado, Georgia, Florida, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, restricted to traffic originating at the above plant or warehouse sites and destined to points named above, and further restricted against the transportation of oil field commodities as defined in Mercer—Extension—Oil Field Commodities, 74 MCC 459. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Montgomery or Birmingham, Ala.

No. MC 115322 (Sub-No. 93), filed December 15, 1972. Applicant: REDWING REFRIGERATED, INC., 2939 Orlando Drive, Post Office Box 1698, Sanford, FL 32771. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street, NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, yogurt and prepared desserts*, from Walton, N.Y., and Hagestown, Md., to points in North Carolina, South Carolina, Georgia, and Florida. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant does not designate where it is to be held.

No. MC 116077 (Sub-No. 335), filed December 18, 1972. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, TX 77027. Applicant's representative: Pat H. Robertson, 401 First National Life Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum wax*, in bulk, in tank vehicles, from Beaumont, Tex., to points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La.

No. MC 116474 (Sub-No. 24), filed January 2, 1973. Applicant: LEAVITTS FREIGHT SERVICE, INC., 3855 Marcola Road, Springfield, OR 94477. Applicant's representative: David C. White, 2400 Southwest Fourth Avenue, Portland, OR 97201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles and piling*, from points in Lane County, Oreg., to points in Nevada and El Dorado County, Calif., under a continuing contract with L. D. McFarland Co., Eugene, Oreg. NOTE: No duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 116519 (Sub-No. 18), filed December 22, 1972. Applicant: FREDERICK TRANSPORT LIMITED, Rural Route 6, Chatham, Ontario, Canada. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural, industrial, and construction machinery* and *equipment and attachments* for and *equipment* designed for use with such machinery and equipment; (2) *such machinery and equipment* as is dealt in by

lawn and garden dealers and trailers designed for the transportation of such machinery; and (3) *attachments, accessories, parts, and supplies* used in and used for the manufacture, repair, and assembly of the items described in sections (1) and (2) above, from the facilities of the New Holland Division, Sperry Rand Corp. located at New Holland, Mountville, and Belleville, Pa., and Grand Island, Nebr., to ports of entry on the United States-Canada boundary lines located in New York and Michigan. Restriction: The transportation authorized herein is restricted to foreign commerce. NOTE: Applicant states that the requested authority cannot be tacked with its existing authoriy. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 116763 (Sub-No. 235), filed December 18, 1972. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Food and foodstuffs* (except commodities in bulk), (a) from New Bethlehem, Pa., to Memphis, Tenn., and Orrville, Ohio; (b) from Orrville, Ohio to points in Kentucky, Illinois, Wisconsin, Minnesota, Iowa, South Dakota, North Dakota, North Carolina, South Carolina, West Virginia, Nebraska, Kansas, Missouri, those in Virginia south of U.S. Highway 60, those in New York on and west of New York Highway 12, those in Pennsylvania on and west of U.S. Highway 220, and Scranton and Philadelphia, Pa.; and (c) from Memphis, Tenn., to points in Iowa and Nebraska, and (2) *food and foodstuffs, and such commodities* as are used or dealt in by the J. M. Smucker Co., from Memphis, Tenn., to Orrville, Ohio, restricted to traffic originating at the facilities of the J. M. Smucker Co. or subsidiaries thereof. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 117370 (Sub-No. 25), filed December 20, 1972. Applicant: STAFFORD TRUCKING, INC., 2155 Hollyhock Lane, Elm Grove, WI 53122. Applicant's representative: Nancy J. Johnson, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand and sand with additives, in bulk*, from Ogle County, Ill. at or near Oregon, Ill. to points in Iowa, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, West Virginia, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison, Wis., or Milwaukee, Wis.

No. MC 117574 (Sub-No. 223), filed December 18, 1972. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, PA 17013. Applicant's representative: James W. Hagar, 100 Pine Street, Post Office Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors* (except those with vehicle beds, bed frames, and fifth wheels); (2) *equipment* designed for use in conjunction with tractors; (3) *agricultural, industrial, and construction machinery and equipment;* (4) *trailers* designed for the transportation of the above-described commodities (except those designed to be drawn by passenger automobiles); (5) *attachments* for the above-described commodities; (6) *internal combustion engines;* (7) *such machinery and parts, accessories and attachments* therefor as are dealt in by wholesale and retail recreational, lawn and garden equipment supply stores and dealers; (8) *parts* of all of the above-described commodities when moving in mixed loads with such commodities; and (9) *materials, equipment and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities described in (1) through (8) above, between the plantsites of the New Holland Machine Company Corporation at Belleville, Mountville, and New Holland, Pa., on the one hand, and on the other, points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 118959 (Sub-No. 105), filed December 18, 1972. Applicant: JERRY LIPPS, INC., 130 South Frederick, Cape Girardeau, MO 63701. Applicant's representative: Axelrod, Goodman, Steiner & Bazelon, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, plastic and plastic products, products produced or distributed by manufacturers and converters of paper and paper products and plastic and plastic products*, and *materials and supplies* used in the manufacture and distribution of the above named commodities (except commodities which because of size or weight require the use of special equipment, and commodities in bulk), between the plantsites and facilities of the Mead Corp. at or near Chillicothe and Schooleys, Ohio, and Kingsport and Gray, Tenn., on the one hand, and, on the other, points in Florida. NOTE: Applicant holds a permit in No. MC 125664 and dual operations were approved by the Commission in No. MC 118959 (Sub-No. 26). Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 118989 (Sub-No. 84), filed December 15, 1972. Applicant: CONTAINER TRANSIT, INC., 5223 South Ninth Street, Milwaukee, WI 53221. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, (1) from Jefferson (Ashtabula County), Ohio to points in Indiana, Michigan, Kentucky, Pennsylvania, New York, and West Virginia; and (2) from Gurnee, Ill. to points in Indiana and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn. or Chicago, Ill.

No. MC 119384 (Sub-No. 23), filed November 29, 1972. Applicant: MORTON TRUCK LINES, INC., 101 West Willis Avenue, Perry, IA 50220. Applicant's representative: E. Stephen Heisley, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shell core sand* (except in bulk), from points in Illinois and Wisconsin to Perry, Iowa. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 119726 (Sub-No. 28), filed November 29, 1972. Applicant: N. A. B. TRUCKING CO., INC., 2502 West Howard Street, Indianapolis, IN 46221. Applicant's representative: James L. Beattey, 130 East Washington Street, Suite 1000, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bedding plant containers and plastic flowerpots* for greenhouse production, from Little Falls, Minn., to point in Texas, Wisconsin, Michigan, Ohio, Pennsylvania, Indiana, Illinois, Virginia, West Virginia, Kentucky, Tennessee, Georgia, North Carolina, South Carolina, Alabama, Mississippi, Arkansas, Florida, Oklahoma, Louisiana, Iowa and Missouri. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 119774 (Sub-No. 66), filed December 22, 1972. Applicant: EAGLE TRUCKING COMPANY, a corporation, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, semitrailers, trailer chassis*, other than those designed to be drawn by passenger automobiles; *dollies, parts, equip-*

ment, and accessories therefore in or attached to the transported trailer in initial moving in truck-away or drive-away service from the plantsite of Lufkin Industries, Inc., at or near Lufkin, Tex., to points in the United States (except Alaska and Hawaii); and (2) *trailers, semitrailers, trailer chassis,* other than those designed to be drawn by passenger automobiles; *dollies, parts, equipment, and accessories* therefor in or attached to the transported trailer in truck-away or drive-away service in secondary movements between all points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Dallas or Houston, Tex.

No. MC 119777 (Sub-No. 248), filed December 29, 1972. Applicant: LIGON SPECIALIZED HAULERS, INC., Post Office Box L, Madisonville, KY 42431. Applicant's representative: Louis J. Amato (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plywood,* plain or finished, from Savannah, Ga., to points in Minnesota, Iowa, Missouri, Wisconsin, Illinois, Indiana, Michigan, Ohio, Kentucky, West Virginia, Pennsylvania, North Dakota, and South Dakota. NOTE: Applicant holds contract carrier authority under MC 126970 Subs 1 and 2, therefore common control and dual operations may be involved. Applicant states that the requested authority could be tacked with its existing authority at points in Illinois, Kentucky, and West Virginia. Applicant has no present intention to tack. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Jacksonville, Fla.

No. MC 119789 (Sub-No. 139), filed December 29, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr., Post Office Box 6188, Dallas, TX 75222. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs,* (1) from Hoopeston and Princeville, Ill., to points in Kansas and Missouri; (2) from St. Francisville, La., to points in Illinois; and (3) from St. Francisville, La., to points in Arkansas, Oklahoma, Missouri, Kansas, Colorado, Utah, Iowa, Nebraska, Wyoming, Minnesota, North Dakota, South Dakota, Montana, and Washington. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Dallas, Tex.

No. MC 119789 (Sub-No. 140), filed January 2, 1973. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* in containers, from Turlock, Calif., to points in Oklahoma, Texas, Louisiana, and Illinois. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Dallas, Tex.

No. MC 119789 (Sub-No. 141), filed January 3, 1973. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188 (1612 East Irving Boulevard), Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* from Columbus, Ohio, to points in Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Dallas, Tex.

No. MC 119934 (Sub-No. 189), filed January 3, 1973. Applicant: ECOFF TRUCKING, INC., 625 East Broadway, Fortville, IN 46040. Applicant's representative: Robert W. Loser II, 1009 Chamber of Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Commodities,* in bulk, from the site of Bulk Distribution Centers, Inc., at or near Indianapolis, Ind., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Tennessee, West Virginia, and Wisconsin, restricted to traffic having an immediately prior movement by rail. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Louisville, Ky.

No. MC 121306 (Sub-No. 7), filed December 6, 1972. Applicant: SUPERIOR MOTOR EXPRESS, INC., Post Office Box 98, Gold Hill, NC 28071. Applicant's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel pipe, tubing and conduit,* from Wheatland, Pa., to points in South Carolina, Georgia, Florida, and in that portion of Virginia on and south of U.S. Highway 58. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Charlotte, N.C.

No. MC 123993 (Sub-No. 25), filed January 2, 1973. Applicant: FOGLEMAN TRUCK LINE, INC., Post Office Box 1504, Crowley, LA 70526. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Building, Austin, TX 78701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Carbon black* (except in bulk), (1) fom Sterlington, La., to Meridian, Miss., restricted to traffic having a subsequent movement by rail and in railroad owned trailers and *empty trailers* from Meridian, Miss., to Sterlington, La., and (2) from Sterlington, La., to Vicksburg, Miss., restricted to traffic having a subsequent movement by water. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Baton Rouge or New Orleans, La.

No. MC 121454 (Sub-No. 3), filed December 1, 1972. Applicant: WALSH MESSENGER SERVICE, INC., Post Office New Hyde Park, N.Y. 11040 (mailing address above), 18 Third Street, Garden City Park, NY. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, commodities requiring special equipment, optical products, biological chemical specimens, and photographic film), between points in Nassau and Suffolk Counties, N.Y., on the one hand, and, on the other, points in Massachusetts, Rhode Island, New York (except points in Rockland, Orange, Putnam, Dutchess, Columbia, Ulster, Sullivan, Albany, Greene, Nassau, Suffolk, and Westchester Counties and New York City), Delaware, Pennsylvania, Maryland, and the District of Columbia. Restriction: The operations herein are restricted against the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor to one consignee on any one day. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Hempstead, N.Y.

No. MC 121597 (Sub-No. 3), filed December 8, 1972. Applicant: CHICKASAW MOTOR LINE, INC., 531 Woodycrest Avenue, Nashville, TN 37211. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) Between Memphis, Tenn. (excluding that part of its commercial zone lying outside of Tennessee), and the junction of Tennessee Highways

100 and 18: From Memphis over U.S. Highway 64 to junction Tennessee Highway 100, thence over Tennessee Highway 100 to junction Tennessee Highway 18, and return over the same route, serving all intermediate points between Somerville (including Somerville) and said junction of Tennessee Highways 100 and 18; (2) Between Memphis, Tenn. (excluding that part of its commercial zone lying outside of Tennessee, and junction Tennessee Highways 100 and 18: From Memphis over U.S. Highway 72 to junction Tennessee Highway 57, thence over Tennessee Highway 57 to junction Tennessee Highway 18, thence over Tennessee Highway 18 to junction Tennessee Highway 100, and return over the same route, serving all intermediate points between Collierville (including Collierville) and said junction of Tennessee Highways 18 and 100; (3) Between Somerville, Tenn., and Moscow, Tenn.: From Somerville over Tennessee Highway 76 to Moscow and return over the same route serving all intermediate points; (4) Between Bolivar and Whiteville, Tenn.: From Bolivar over U.S. Highway 64 to Whiteville and return over same route serving all intermediate points; and (5) Between junction of Tennessee Highways 18 and 138 and the junction of Tennessee Highways 138 and 100: From junction of Tennessee Highways 18 and 138 over Tennessee Highway 138 to junction of Tennessee Highways 138 and 100, and return over same route serving all intermediate points. Restriction: Restricted against the tacking or joinder with any other authority held by applicant so as to provide any service between Memphis and Nashville, Tenn. NOTE: Applicant presently holds a certificate of registration in No. MC 121597 authorizing between those points listed herein and Nashville, Tenn., therefore duplicating authority may be involved. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 121604 (Sub-No. 1) (Clarification), filed August 18, 1972, published in the FEDERAL REGISTER issue of October 12, 1972, and republished as clarified this issue. Applicant: CENTRAL TRANSFER AND DISTRIBUTION COMPANY, a corporation, 801 South 15th Street, Omaha, NE 68101. Applicant's representative: Earl H. Scudder, Jr., Post Office Box 82028, 605 South 14th Street, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except bulk oil, gasoline, bulk commodities, and perishable goods which require refrigeration), between points in the Omaha, Nebr.-Council Bluffs, Iowa commercial zone on the one hand, and, on the other, points in Nebraska. NOTE: Applicant seeks to convert its certificate of registration to a certificate of public convenience and necessity. The purpose of this republication is to clarify the exceptions to general commodities so they will read like the certificate of registration. Also, the certificate of registration does not permit service at points in the Omaha commercial zone located outside the State of Nebraska. Applicant intends to adduce evidence of need for its service to and from such points. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 124078 (Sub-No. 537), filed December 14, 1972. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Black liquor skimmings, brine saline solution and sodium sulphate*, in bulk, between Clyattville, Ga., and Jacksonville, Fla. NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its chemical and dry chemical authority in No. MC 124078 (Sub-Nos. 331 and 380), respectively, at Clyattville, Ga., to provide through service to Jacksonville, Fla., from points in Robertson County, Tenn., and North Charleston, S.C., respectively. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Jacksonville, Fla.

No. MC 124160 (Sub-No. 6), filed December 14, 1972. Applicant: SAVAGE BROTHERS INCORPORATED, 601 East Main Street, American Fork, UT 84003. Applicant's representative: Lon Rodney Kump, 720 Newhouse Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal* in bulk, between points in Carbon, Emery, and Sevier Counties, Utah, restricted to traffic having a subsequent out-of-State movement. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 124309 (Sub-No. 7), filed January 2, 1973. Applicant: ALPHIE J. BOUSLEY, Box 61A, Route 3, Armstrong Creek, WI 54103. Applicant's representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Marine deck equipment, mining equipment, construction equipment, iron and steel articles, cast iron products, and automotive parts* between points in the United States including Alaska (excluding Hawaii), under a continuing contract with Lake Shore, Inc., of Iron Mountain, Mich. NOTE: If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis.

No. MC 124579 (Sub-No. 9), filed December 15, 1972. Applicant: WIKEL BULK EXPRESS, INC., Route 1, Huron, Ohio 44839. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and blends* thereof, in bulk, from Dayton, Ohio, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant holds contract carrier authority under MC 114377, therefore dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio or Washington, D.C.

No. MC 124692 (Sub-No. 99), filed December 18, 1972. Applicant: SAMMONS TRUCKING, a corporation, Post Office Box 1447, Missoula, MT 59301. Applicant's representative: Gene P. Johnson, 425 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bituminous fibre pipe and conduit, plastic products, fibre vaults, and accessories used in connection with said products*, from West Bend, Wis., to points in Idaho, Montana, North Dakota, Oregon, South Dakota, Washington, Wyoming, and Utah, restricted to traffic originating at the plant and warehouse facilities of McGraw-Edison Co., Fibre Products Division. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn., or Chicago, Ill.

No. MC 125433 (Sub-No. 36), filed December 19, 1972. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1891 West 2100 South, Salt Lake City, UT 84119. Applicant's representative: David J. Lister (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* in cargo containers unmounted or mounted on shipper-owned chassis, and *empty containers* unmounted or mounted on shipper-owned chassis, between points in Washington, Oregon, California, Idaho, Montana, Wyoming, Colorado, Arizona, Utah, and Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, San Francisco, Calif., or Portland, Oreg.

No. MC 125473 (Sub-No. 10), filed December 18, 1972. Applicant: YAZOO TRUCKING CO., INC., 1633 Highway 49 East (Post Office Box 625), Yazoo City, MS 39194. Applicant's representative: Fred W. Johnson, Jr., 717 Deposit Guaranty Bank Building (Post Office Box 22628), Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes,

transporting: *Urea and urea products*, in bulk, in dump type vehicles, from the plantsite of Triad, located near Donaldsonville, La., to points in Alabama, Arkansas, Mississippi, Florida, Georgia, and Texas, under contract with Mississippi Chemical Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 126625 (Sub-No. 12), filed December 18, 1972. Applicant: MURPHY SURF-AIR TRUCKING COMPANY, INC., Bluegrass Airport, Lexington, Ky. 40504. Applicant's representative: Robert H. Kinker, 711 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Branch County Memorial Airport, at or near Coldwater, Mich., and points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to the transportation of shipments having a prior or subsequent movement by air. NOTE: Applicant states the requested authority can be tacked at Coldwater, Mich., or points in Ohio, Kentucky, and West Virginia, to permit service between points in Michigan, Illinois, and Indiana and those points sought herein. Applicant further states that the requested authority duplicates that authority it presently holds in No. MC 126625 (Sub-Nos. 1, 2, 3, 5, and 8). If a hearing is deemed necessary, applicant requests it be held at Lexington or Louisville, Ky.

No. MC 126899 (Sub-No. 60), filed December 11, 1972. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Paducah, KY 42001. Applicant's representative: George M. Catlett, 703–706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, and *related advertising materials*, from St. Louis and St. Joseph, Mo., to points in McCracken County, Ky., and *empty malt beverage containers* on return. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Louisville or Paducah, Ky.

No. MC 127100 (Sub-No. 11), filed November 29, 1972. Applicant: B & B MOTOR LINES, INC., 911 Summitt Street, Toledo, OH 43604. Applicant's representative: Earl F. Boxwell, Ninth Floor, Toledo Trust Building, Toledo, Ohio 43604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (beer and ale) in containers from Newport, Ky., to Toledo, Sandusky, Lima, and Defiance, Ohio, and *empty containers* on return trip from Toledo, Sandusky, Lima, and Defiance, Ohio to Newport, Ky., under continuing contract with Metropolitan Distributing Co., the Thornburgh Sales Co., Shawnee Distributors, Inc., and the Defiance Beverage Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, Lansing, Mich., or Indianapolis, Ind.

No. MC 127115 (Sub-No. 5), filed January 3, 1973. Applicant: MILLER TRANSPORT, INC., 510 West Fourth North Street, Hyrum, UT 84319. Applicant's representative: Harry D. Pugsley, 400 El Paso Gas Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat and meat products*, from points in Cache County, Utah to Las Vegas and Reno, Nev.; Seattle and Walla Walla, Wash.; Portland, Oreg.; and points in California, under contract with Tri-Miller Packing at Hyrum Utah; and (2) *foam, cellular expanded plastics, rubber, and related accessories*, from Los Angeles and San Francisco, Calif. and Portland, Oreg. to points in Utah, those points in Idaho south of Idaho County, and those points in Nevada from Reno to Elko on U.S. Highway 40 and Interstate Highway 80, under contract with Allstate Foam Corporation at Salt Lake City, Utah. NOTE: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 128279 (Sub-No. 22), filed October 20, 1972. Applicant: ARROW FREIGHTWAYS, INC., 150 Woodward Road, SE., Post Office Box 25125, Albuquerque, NM 87125. Applicant's representative: Jack A. Smith, 1627 National Building, Albuquerque, N. Mex. 87101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, articles of unusual value, and household goods as defined by the Commission), between points in that part of New Mexico, Colorado, and Arizona, within 200 miles of Albuquerque, N. Mex. NOTE: Applicant now holds authority to transport all of these commodities in the areas shown above, except for the restriction of service to or from Federal or State highways, other than the Albuquerque, N. Mex. The purpose of this application is to remove the restriction not authorizing service to or from Federal or State highways in the above areas, other than Albuquerque, N. Mex. If a hearing is deemed necessary, applicant requests it be held at Albuquerque or Santa Fe, N. Mex.

No. MC 128375 (Sub-No. 88), filed December 18, 1972. Applicant: CRETE CARRIER CORPORATION, Box 249, Crete, NE. Applicant's representatives: Ken Adams and Duane Acklie (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal food ingredients*, from points in the United States (including Alaska and Hawaii), to Mattoon, Ill., under continuing contract with Allen Products Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa. or Lincoln, Nebr.

No. MC 128375 (Sub-No. 89), filed December 26, 1972. Applicant: CRETE CARRIER CORPORATION, Box 249, Crete, NE 68333. Applicant's representative: Ken Adams (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal food, and materials and supplies* used in the manufacture and distribution of animal food, between Crete, Nebr., on the one hand, and, on the other, points in Alabama, Georgia, Idaho, Montana, Nevada, Utah, Wyoming, and those in Colorado north of U.S. Highway 50, under continuing contract with Allen Products Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Lincoln, Nebr.

No. MC 128383 (Sub-No. 25), filed November 24, 1972. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, PA 19079. Applicant's representative: James W. Patterson, 2107 The Fidelity Building, Philadelphia, Pa. 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk and commodities, the transportation of which, because of size and weight, require the use of special equipment), between Weir Cook Airport at or near Indianapolis, Ind., and Chicago-O'Hare International Airport, at Chicago, Ill. NOTE: Applicant states that the requested authority can be tacked with its existing authority but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 129480 (Sub-No. 5), filed December 1, 1972. Applicant: TRI-LINE EXPRESSWAYS, LTD., Post Office Box 5245, Station "A", Calgary, AB, Canada. Applicant's representative: Hugh Sweeney, Post Office Box 1321, Billings, MT 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Burned clay building brick, vitrified clay pipe and joints and vitrified clay flue lining*, from the international boundary line between the United States and Canada located at points in North Dakota and Minnesota to points in North Dakota, South Dakota, and Minnesota; and (2) *charcoal, charcoal briquets, fireplace logs, and related items*, such as *lighter fluid, wood chips and barbeque base*, from Isanti, Minn., and Dickinson, N. Dak., to the international boundary line between the United States and Canada located at points in Montana, North Dakota, and Minnesota. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed neces-

sary, applicant requests it be held at Billings, Mont.

No. MC 129480 (Sub-No. 6), filed December 20, 1972. Applicant: TRI-LINE EXPRESSWAYS, LTD., Post Office Box 5245, Station A, Calgary, AB, Canada. Applicant's representative: Hugh Sweeney, Post Office Box 1321, Billings, MT 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Weed-killing compounds* in containers, from Military, Kans., to the international boundary line between the United States and Canada situated in Montana, North Dakota, and Minnesota. NOTE: Applicant states that the existing authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Billings, Mont.

No. MC 133106 (Sub-No. 25), filed January 3, 1973. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, Post Office Box 1358, Liberal, KS 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Diagnostic products, medicines, proprietary drugs, ethical drugs, nonprescription sunglasses, toothbrushes, dental-impression compounds, denture-cleansing paste, dental adhesives, dental wax and crowns*, moving in vehicles equipped with mechanical temperature control devices, from the plantsite and storage facilities used by Warner-Lambert Co. at or near Morris Plains, N.J., to Peoria, Ill., Dallas, Tex., and Los Angeles, Calif.; (2) *nonprescription sunglasses*, from Chelsea, Mass., to the destination points named in (1) above; (3) *toothbrushes, dental-impression compounds, denture-cleansing paste, dental adhesives, dental wax and crowns*, from Philadelphia, Pa., to the destination points named in (1) above, under a continuing contract, or contracts, in (1), (2), and (3) above with Warner-Lambert Co. of Morris Plains, N.J. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Kansas City, Mo.

No. MC 133106 (Sub-No. 26), filed January 3, 1973. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, Post Office Box 1358, Liberal, KS 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, in vehicles equipped with mechanical temperature control, from the plantsite and storage facilities utilized by International Telephone & Telegraph Corp. at or near St. Paul, Minn., to Dallas, Tex., and Denver, Colo., under a continuing contract, or contracts, with International Telephone & Telegraph Corp. of New York, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Kansas City, Mo.

No. MC 133591 (Sub-No. 7), filed December 18, 1972. Applicant: WAYNE DANIEL, doing business as WAYNE DANIEL TRUCK, Post Office Box 303, Mount Vernon, MO 65712. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sporting goods equipment and clothing*, from the plantsites, warehouses, and storage facilities utilized by Spalding Co. at or near Ava, Mo., and Fort Smith, Ark., to points in California, Nevada, and Arizona. NOTE: Applicant holds permanent contract carrier authority under MC 134494 Subs 1 and 2, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Kansas City, Mo.

No. MC 134017 (Sub-No. 3), filed December 18, 1973. Applicant: R. M. HENDERSON AND MARVIN J. McABEE, a partnership doing business as H & M MOTOR LINES, One Furman Hall Road, Greenville, SC 29608. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles, burlap articles and paper articles* (except in bulk), from Newark, N.J., to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Pennsylvania, and Maryland, under a continuing contract or contracts with Packaging Products and Design Corp., Newark, N.J. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 134035 (Sub-No. 3), filed December 14, 1972. Applicant: DOUGLAS TRUCKING COMPANY, a corporation, Post Office Box 1024, Corsicana, TX 75110. Applicant's representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures for such containers, and corrugated boxes or paper containers*, in mixed loads with glass containers and closures for such containers, from Corsicana, Tex., to points in Tennessee (except Memphis), Arkansas, Mississippi, and New Orleans, La. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fort Worth or Dallas, Tex.

No. MC 134494 (Sub-No. 3), filed December 18, 1972. Applicant: WAYNE DANIEL, doing business as WAYNE DANIEL TRUCK, Post Office Box 303, Mount Vernon, MO 65712. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items, sandboxes, blackboards, chalkboards, and furniture*, from the plantsites, warehouses and storage facilities of Beatrice Foods Co., its divisions and subsidiaries at St. Louis, Mo., to points in Oklahoma, Texas, Nebraska, and Kansas, under a continuing contract with Beatrice Foods Co., its divisions and/or subsidiaries. NOTE: Applicant has presently pending common carrier authority under MC 133591 and Subs thereto, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis., or St. Louis, Mo.

No. MC 134565 (Sub-No. 4), filed December 26, 1972. Applicant: J & W TRANSPORT, INC., 2212 Hazelwood Avenue, Fort Wayne, IN 46805. Applicant's representative: Michael V. Gooch, 777 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes*, in driveaway service, between all points in the United States (including Alaska, but excluding Hawaii), under contract with Starcraft Co., Division of Bangor-Punta Operations, Inc. NOTE: Dual operations and common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 134847 (Sub-No. 7), filed January 3, 1973. Applicant: BESSETTE TRANSPORT INC., 3 Rang St. Marc, St Philippe Co., Laprairie, PQ, Canada. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural, industrial, and construction machinery and equipment and attachments for and equipment* designed for use with such machinery and equipment; (2) *such machinery and equipment* as is dealt in by lawn and garden dealers and *trailers* designed for the transportation of such machinery; (3) *attachments, accessories, parts, and supplies* used in and used for the manufacture, repair, and assembly of the items described in sections (1) and (2) above, from the facilities of the New Holland Division, Sperry Rand Corp., located at New Holland, Mountville, and Belleville, Pa. to ports of entry on the United States-Canada boundary line located at Champlain and Rouses Points, N.Y. Restriction: The transportation authorized herein is restricted to foreign commerce. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135455 (Sub-No. 1), filed December 10, 1972. Applicant: THOMAS E. ZABEL, Route 1, Box 118, Plainview, MN 55964. Applicant's representative: F. H. Kroeger, 2288 University Avenue, St. Paul, MN 55114. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Canned foods*, between Plainview, Minn., and Manitowoc, Wis., under contract with Lakeside Packing Co. NOTE:

If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 135639 (Sub-No. 1), filed December 14, 1972. Applicant: QUEENSWAY, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Acoustical materials including vegetable, mineral, or wood fibres, ornaments, acoustical suspension systems including lighting fixtures, moldings, plastic, metal, fibrous accessories, fibrous nonbreathing splines, including ceiling or wall panels, insulating materials and accessories therefor, and ceiling or wall ornaments*, originating at the plantsite of the Celotex Corp. in Exeter Township, Pa., to points in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Massachusetts, Pennsylvania, New York, New Jersey, Maryland, Virginia, West Virginia, Delaware, and the District of Columbia and North Carolina and South Carolina; and (2) *materials, supplies, accessories and equipment used incidental to or in connection with the manufacture, sale and distribution of the above-named commodities*, originating at points in the above-described destination territory and destined to the above-described origin point. Restriction: Restricted to the transportation of shipments requiring delivery to job site or construction site. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 135982 (Sub-No. 2), filed December 18, 1972. Applicant: S. L. HARRIS, doing business as P. B. I., Post Office Box 7130, Longview, TX 75601. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers, semi-trailers, trailer chassis* (other than those designed to be drawn by passenger automobiles), *dollies, containers, parts, and equipment and accessories therefor*, in or attached to the transported trailer, in initial movements, in truckaway or driveaway service from the plantsite of Lufkin Industries, located approximately 7 miles south of Lufkin, Tex., to points in the United States including Alaska (but excluding (Hawaii), and (2) *trailers, semi-trailers, trailer chassis* (other than those designed to be drawn by passenger automobiles), *dollies, containers, parts, and equipment and accessories therefor*, in or attached to the transported trailer, in secondary movements, in truckaway or driveaway service, between points in the United States including Alaska (but excluding Hawaii). NOTE: If a hearing is deemed necssary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 136100 (Sub-No. 2), filed December 11, 1972. Applicant: K & K TRANSPORTATION CORP., 4515 North 24th Street, Omaha, NE 68110. Applicant's representative: Einar Viren, 904 City National Bank Building, Omaha, Nebr. 69102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fresh and frozen foods*, from points in Oregon, Washington, Idaho, and California, to Omaha and Lincoln, Nebr., under contract with Midwest Supply Co.; (2) *labels*, from Omaha, Nebr., to points in the United States (except Alaska and Hawaii), under contract with Epsen Lithographing Co. and (3) *stamp collectors catalogues*, (a) from Moonachie, N. J., to points in the United States (except Alaska and Hawaii); and (b) from Omaha, Nebr., to points in the United States (except Alaska and Hawaii), under contract with Scott Publishing Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr. or Washington, D.C.

No. MC 136417 (Sub-No. 1), filed December 15, 1972. Applicant: B. M. UNDERWALD TRUCKING, INC., 821 East Linden Avenue, Linden, NJ 07036. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, in dump vehicles, between points in Hudson, Essex, Union and Bergen Counties, N.J.; and New York, N.Y., on the one hand, and, on the other, points in Connecticut, New York, and Pennsylvania. Restriction: Service is to be performed under contract with Newark Iron & Metals Co.; and Norman Lowenstein, Inc. NOTE: Applicant holds common carrier authority under MC 106058, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 136513 (Sub-No. 4), filed December 20, 1972. Applicant: TALMADGE C. GRAY, Post Office Box 233, Milford, UT 84751. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Shredded scrap metal*, loaded loose in open-top equipment, (1) from Vernon, Calif., to copper precipitation sites in Arizona, Nevada, and Utah, and (2) from rail-to-truck transfer facilities located in Arizona, Nevada, and Utah to copper precipitation sites in Arizona, Nevada, and Utah when immediately preceding movement is by rail, under contract with Vulcan Materials Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., Milford, Utah, or Las Vegas, Nev.

No. MC 136645 (Sub-No. 2), filed January 2, 1973. Applicant: DIME DELIVERY LIMITED, 6026 Main Street, Niagara Falls, Ontario, Canada. Applicant's representative: Robert D. Gunderman, Suite 1708 Statler Hilton, Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in express service (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between ports of entry on the international boundary line between the United States and Canada on the Niagara River, on the one hand, and, on the other, points in Erie and Niagara Counties, N.Y. Restrictions: (1) To shipments originating at or destined to points in Canada; (2) To the transportation of shipments, in van trucks having a gross vehicle weight not exceeding 6,000 pounds; and (3) To shipments, the deliveries of which are to be completed on the same day that shipments are tendered. NOTE: If a hearing is deemed necessary, applicant requests it be held at Buffalo, N.Y.

No. MC 136903 (Sub-No. 2), filed December 24, 1972. Applicant: INTERMODAL TRANSPORT, INC., Post Office Box 19022, Louisville, KY 40219. Applicant's representative: W. F. Hart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, in bulk, from the site of Bulk Distribution Centers, Inc., at or near Indianapolis, Ind., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Tennessee, West Virginia, and Wisconsin, restricted to traffic having an immediately prior movement by rail. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Louisville, Ky.

No. MC 136903 (Sub-No. 3), filed January 2, 1973. Applicant: INTERMODAL TRANSPORT, INC., Post Office Box 19022, Louisville, KY 40219. Applicant's representatives: W. F. Hart (same address as applicant), and Donald W. Smith, 900 Circle Tower, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, in bulk, from the facilities of Bulk Distribution Centers, Inc., at points in Mecklenburg and Union Counties, N.C., to points in Alabama, Florida, Georgia, Kentucky, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia, restricted to traffic having a prior movement by rail. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Louisville, Ky.

No. MC 138009 (Sub-No. 2), filed November 9, 1972. Applicant: OLEN WAGNER, doing business as OLEN WAGNER TRUCKING, Route 9, Box 165, Mena, AR 71953. Applicant's representative: Olen Wagner (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fish meal, fish solubles or fish oil, animal fat*, from Holmwood, La.; Port Arthur, Tex.; Franklinton, La.; and Dallas, Tex., to Mena and Grannis, Ark., under contract with Johnson's Feed Mill and Lane Feed Mill. NOTE: If a hearing is deemed neces-

sary, applicant requests it be held at either Mena, Fort Smith, or Little Rock, Ark.

No. MC 138032 (Sub-No. 1), filed November 22, 1972. Applicant: ED LYNN, doing business as LYNN'S EMERGENCY DELIVERY SERVICE, 408 Mercury Drive, Godfrey, IL 62035. Applicant's representative: Gregory M. Rebman, 1230 Boatmen's Bank Building, 314 North Broadway, St. Louis, MO 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydraulic parts, machine gears, belts, pulleys, bushings, and printing cylinders* (restricted to the transportation of shipments of said commodities weighing 2,000 pounds or less) between St. Louis, Mo., and points in St. Louis County, Mo., on the one hand, and, on the other, Alton, Godfrey, Carol Stream, Morris, Chicago, Ill.; Elkhart, Ind.; Cincinnati, Ohio, and Kalamazoo, Mich.; restricted to traffic originating or destined to the plantsite and facilities of Alton Box Board Co., Alton, Ill.; Alton Box Board Co., Carton Division, Godfrey, Ill.; Southern Gravure Service, Inc.; St. Louis, Mo.; and Bearing Headquarters Co., Alton, Ill. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 138036 (Sub-No. 2), filed December 18, 1972. Applicant: J & S, INC., 127 Larchfield Drive, McKeesport, PA 15135. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail drug and variety stores, and *equipment, materials, and supplies*, used in the conduct of such business (except commodities in bulk); (1) between points in O'Hara Township (Allegheny County), Pa., on the one hand, and, on the other, points in Delaware, Indiana, Illinois, Kentucky, Maryland, the Lower Peninsula of Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin, and (2) between Falls Township (Bucks County), Pa., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia, and the operations in (1) and (2) above are limited to a transportation service to be performed under a continuing contract, or contracts, with Thrift Drug Division of J. C. Penny Co., Inc., of New York, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 138058 (Sub-No. 2), filed December 11, 1972. Applicant: JAMES C. WILSON, 10530 Carson Drive, Baton Rouge, LA 70807. Applicant's representative: J. Clayton Johnson, Post Office Box 2471, Baton Rouge, LA 70821. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in charter and special group movements, from points in Louisiana to points in Texas, Oklahoma, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee, Missouri, Illinois, Michigan, Arkansas, Indiana, and return. NOTE: If a hearing is deemed necessary, applicant requests it be held at Baton Rouge or New Orleans, La.

No. MC 138116 (Sub-No. 1), filed December 4, 1972. Applicant: SUPERIOR MOLASSES SERVICE, INC., 12638 Orr and Day Road, Norwalk, CA 90650. Applicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Poultry feed, including meat scraps or meat meal*, from Phoenix, Ariz., and points in Maricopa and Pinal Counties, Ariz., to points in San Bernardino, Riverside, Orange, and Los Angeles, Calif., under contract with Jack Perisits Egg Enterprises. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Bernardino, Calif.

No. MC 138180 (Sub-No. 2), filed January 3, 1973. Applicant: FRED O'BARKER AND FAYE E. LEYDIG, a partnership, doing business as VALLEY TRUCKING COMPANY, Post Office Box 176, Corriganville, MD 21524. Applicant's representative: D. L. Bennett, 129 Edginton Lane, Wheeling, WV 26003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bulk rock salt*, from Corriganville, Md., to points in Virginia and West Virginia and points in Pennsylvania on and south of U.S. Highway 22, under contract with Morton Salt Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138187, filed October 10, 1972. Applicant: ARCHIE ALLEN, doing business as ARCHIE'S TOWING SERVICE, 6101 South Belvedere Avenue, Tucson, AZ 85714. Applicant's representative: James S. Dix, 808 Transamerica Building, Tucson, Ariz. 85701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Towed motor vehicles*, between Tucson, Ariz., and points in Texas, Utah, New Mexico, Colorado, California, and Nevada. NOTE: If a hearing is deemed necessary applicant requests it be held at Tucson or Phoenix, Ariz.

No. MC 138296 filed December 13, 1972. Applicant: VANGUARD OFFICE FURNITURE DELIVERY, INC., 10 Java Street, Brooklyn, NY 11222. Applicant's representative: Arthur J. Piken, 1 Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between the facilities of Vanguard Business Furniture, a division of Vanguard Diversified, Inc., located at New York, N.Y., on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia, under contract with Vanguard Business Furniture, a division of Vanguard Diversified, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 138293, filed December 3, 1972. Applicant: DUB CHILTON, doing business as YELLOW VAN & STORAGE, Interstate 35 at Walzem Road, San Antonio, Tex. 78218. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, CA 90621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Atascosa, Bandera, Bexar, Blanco, Comal, De Witt, Frio, Gillespie, Gonzales, Guadalupe, Hays, Karnes, Kendall, Kerr, La Salle, Lavaca, McMullen, Medina, and Wilson Counties, Tex., restricted to the transportation of traffic having a prior or subsequent movement in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating, and decontainerizaton of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at San Antonio, Tex.

No. MC 138309, filed December 27, 1972. Applicant: LIEBMANN TRANSPORTATION CO., INC., U.S. Highway 65 North, Iowa Falls, Iowa 50126. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in, used in, or used by hardware, lumber, and building materials and supplies dealers, from points in the United States (except Alaska and Hawaii) to storage and sales facilities of Payless Cashways, Inc., located at or near Abilene, Addison, Duncanville, El Paso, Garland, and Mesquite, Tex.; Albuquerque, N. Mex.; Atlantic, Davenport, Des Moines, Early, Iowa Falls, Manchester, Pocahontas, and Sioux City, Iowa; Austin, South St. Paul, and Worthington, Minn.; Henderson and Sheridan, Colo.; Omaha, Nebr.; Phoenix, Tempe, and Tucson, Ariz.; Topeka, Kans.; Silvis, Ill.; Kansas City and St. Joseph, Mo.; and Colorado Springs, Colo.; Fort Worth and Arlington, Tex.; and Sante Fe, N. Mex., under contract with Payless Cashways, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138310, filed December 18, 1972. Applicant: ALLEN D. VEACH, Post Office Box 68, Vienna, IL 62995. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill.

62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bulk gasoline and diesel fuel, motor oil* (in containers), from Mt. Vernon, Ind., Paducah, Ky., Cape Girardeau and Scott City, Mo., to points in Alexander, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, and Union Counties, Ill., for the account of Veach Oil Co., Vienna, Ill. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., Chicago or Springfield, Ill.

No. MC 138230 (Sub-No. 2), filed December 5, 1972. Applicant: CYNTHIA S. TRAYNER, doing business as DICK TRAYNER AND SONS TRUCKING, Wauregan Road, Canterbury, Conn. 06331. Applicant's representative: John E. Fay, 342 North Main Street, West Hartford, CT 06117. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed stone, bituminous concrete, sand, gravel and mixed aggregates*, between Westerly, R.I., on the one hand, and, on the other, points in New London, Windham, Tolland, New Haven, and Middlesex Counties, Conn., under contract with Westerly Trucking Co., Inc., Westerly, R.I. NOTE: If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn., or Providence, R.I.

No. MC 138312, filed December 18, 1972. Applicant: T AND R MOTORS, INC., Highway 169 South, Route 2, Nowata, OK 74048. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Building, Dallas, Tex. 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, dry, in bulk, in hydraulic dump trailers, from Pryor and Tulsa, Okla., to points in Kansas, Missouri, Arkansas, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex., or Oklahoma City, Okla.

No. MC 138317, filed January 2, 1973. Applicant: CEMENT TRANSPORT, INC., Valley Station, Ky. 40272. Applicant's representative: Ollie L. Merchant, Suite 202, 140 South Fifth Street, Louisville, KY 40202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cement*, in bulk, in tank vehicles, and in bags, from Kosmosdale, Ky., to points in Illinois, Indiana, and points within 180 miles of Kosmosdale and to points in Tennessee; (2) *cement*, in bulk, in tank vehicles, from Cincinnati, Ohio, to points in Indiana and Kentucky within 70 miles of Cincinnati; and (3) *cement*, in bulk, in tank vehicles, and in bags, between points in Illinois, Indiana, Kentucky, and Ohio, subject to the following restrictions: The operations authorized herein are restricted (1) to shipments having a prior movement by rail or water, and (2) restricted against the transportation of cement (a) to points in Kentucky having a prior movement by rail, (b) from Owensboro, Ky., to points in Illinois, Indiana, and Kentucky, having a prior movement by rail or water, and (c) from Louisville, Ky., to points in Illinois, Ohio, and Kentucky, having a prior movement by rail or water. NOTE: Applicant holds contract carrier authority under MC 114107 and Subs thereunder, therefore dual operations may be involved. By the instant application, applicant seeks conversion to common carrier rights of contract carrier authority held in MC 114107 and Subs 4, 5, 6, and 8. No duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky.

No. MC 138341, filed November 29, 1972. Applicant: NORTHWEST AUTO TRANSPORT COMPANY, a corporation, 9125 North Bradford, Portland, OR 97203. Applicant's representative: Robt. R. Hollis, 1121 Commonwealth Building, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Imported automobiles and light trucks*, in truckaway service between points in Oregon, Washington, Idaho, and Montana. NOTE: If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

MOTOR CARRIER OF PASSENGERS

No. MC 124370 (Sub-No. 3), filed December 19, 1972. Applicant: ACE TRANSPORTATION CO., INC., Post Office Box 328, 1407 St. John Avenue, Albert Lea, MN 56007. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Passengers and their baggage*, in the same vehicle with passengers, and *baggage of passengers* in a separate vehicle, in round trip charter operations beginning and ending at points in Rice, Goodhue, Le Sueur, Wabasha, Steele, Dodge, Olmsted, Winona, Waseca, Freeborn, Mower, Fillmore, and Houston Counties, Minn., and extending to points in Wyoming and points on the international boundary line between the United States and Mexico; and (2) *baggage of passengers*, in a separate vehicle, in round trip charter operations, (a) beginning and ending at points in Winnebago County, Iowa, and extending to points in Illinois, Minnesota, Nebraska, South Dakota, and Wisconsin; (b) beginning and ending at points in Freeborn County, Minn., and extending to points in North Dakota, South Dakota, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Minnesota, and Colorado; and (c) beginning and ending at Austin and West Concord, Minn., and extending to points in Iowa, Illinois, Wisconsin, Nebraska, South Dakota, Missouri, Colorado, and North Dakota. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

APPLICATION FOR BROKERAGE LICENSE

No. MC 130189, filed December 22, 1972. Applicant: SHENANDOAH TOURS, INC., 107 Lambert Street, Staunton, VA. Applicant's representative: Robor L. Quick (same address as applicant). For a license (BMC-5) to engage in operations as a broker at Staunton, Harrisonburg, and Winchester, Va., in arranging for the transportation, by motor vehicle, in interstate or foreign commerce, of *passengers and groups of passengers and their baggage*, in sightseeing and pleasure tours beginning and ending at points in Alleghany, Rockbridge, Augusta, Rockingham, Shenandoah, Frederick, Clark, and Warren Counties, Va.; Pendleton, Hardy, Grant, Randolph, Tucker, Hampshire, and Jefferson Counties, W. Va., and extending to points in the United States (except Hawaii, but including Alaska).

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN REQUESTED

No. MC 129712 (Sub-No. 4), filed December 3, 1972. Applicant: GEORGE BENNETT, doing business as GEORGE BENNETT TRUCK LINES, 5194 Houston Road, Post Office Box 7154, Macon, GA 31204. Applicant's representative: T. Baldwin Martin, Sr., 700 Home Federal Building, Post Office Box 4987, Macon, GA 31208. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Implements, implement and tractor* (except truck tractor) *parts, and lubricating oil*, in containers, and *tractors* (except truck tractors), when moving in mixed loads with the above specified commodities, and *related publications, advertising material, packaging and shipping supplies*, between the Ford Tractor Operations Supply Depot located in Memphis, Tenn., and points in Mississippi; points in Union, Lincoln, Morehouse, Ouachita, West Carroll, East Carroll, Richland, Madison, Caldwell, Franklin, Tensas, La Salle, Catahoula, Concordia, East Feliciana, West Feliciana, East Baton Rouge, Pointe Coupee, West Baton Rouge, Iberville, Assumption, Ascension, Livingston, St. James, St. Helena, Tangipahoa, St. John the Baptist, Lafourche, Terrebonne, Washington, St. Tammany, St. Charles, Orleans, Jefferson, St. Bernard, and Plaquemines and the northeast one-half of Jackson parishes, La.; points in Lauderdale, Limestone, Madison, Colbert, Lawrence, Morgan, Franklin, Marion, Winston, Cullman, Lamar, Fayette, Walker, Pickens, Tuscaloosa, Greene, Hale, Sumter, Marengo, Choctaw, Clarke, Washington, Mobile, and Baldwin Counties, Ala., points in Shelby, Cumberland, Clark, Bond, Fayette, Effingham, Jasper, Crawford, Clinton, Marion, Clay, Richland, Lawrence, St. Clair, Washington, Jefferson, Wayne, Edwards, Wabash, Monroe, Randolph, Perry, Franklin, Hamilton, White, Jackson, Williamson, Saline, Gallatin, Union, Johnson, Pope, Hardin, Alexander, Pulaski, and Massac Counties, Ill.; points in Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Livingston, Marshall, Calloway, Lyon, Trigg, Caldwell, Union, Webster, Hopkins, Christian, Daviess, Crittenden, McLean, Muhlenburg, Todd, Hancock, Ohio,

Butler, Logan, Meade, Breckinridge, Grayson, Edmondson, Warren, Simpson, Oldham, Allen, Barren, Jefferson, Bullitt, Hardin, Henderson, and Hart Counties, Ky.; points in Ozark, Howell, Oregon, Ripley, Butler, Dunklin, New Madrid, Pemiscot, Mississippi, Stoddard, Scott, Cape Girardeau, Bollinger, Wayne, Carter, Shannon, Reynolds, Iron, Madison, Perry, Ste. Genevieve, St. Francois, and Texas Counties, Mo.; points in Sevier, Polk, Scott, Sebastian, Crawford, Franklin, Logan, Johnson, Yell, Montgomery, Pike, Hempstead, Pope, Perry, Garland, Hot Spring, Clark, Ouachita, Marion, Searcy, Van Buren, Conway, Saline, Grant, Cleveland, Calhoun, Bradley, Baxter, Stone, Dallas, Cleburne, White, Lonoke, Pulaski, Faulkner, Jefferson, Fulton, Randolph, Clay, Izard, Sharp, Lawrence, Greene, Independence, Jackson, Craighead, Poinsett, Mississippi, Woodruff, Cross, St. Francis, Crittenden, Prairie, Monroe, Lee, Phillips, Arkansas, Desha, Chicot, Lincoln, Drew, Ashley, and Howard Counties, Ark., under a continuing contract with Ford Tractor Operations, Ford Motor Co.

No. MC 138339, filed December 21, 1972. Applicant: MOUNTAIN STATES MOVING & STORAGE CO., INC., 813 West 1700 South, Salt Lake City, UT 84101. Applicant's representative: Miss Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted in the performance of pickup and delivery service in connection with packing, crating and containerization, or unpacking, uncrating and decontainerization of such traffic, between all points within the State of Utah.

MOTOR CARRIER OF PASSENGERS

No. MC 114271 (Sub-No. 10), filed December 29, 1972. Applicant: CONTINENTAL CRESCENT LINES, a corporation, 908 North 13th Street, Birmingham, AL 35203. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations in round trip sightseeing or pleasure tours, beginning and ending at points in Clayton, Coweta, Dade, Douglas, Fayette, Heard, Paulding, and Polk Counties, Ga., and extending to points in the United States (including Alaska, but excluding Hawaii). NOTE: Common control may be *involved*.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.73-2373 Filed 2-7-73;8:45 am]

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federal register

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WASHINGTON, D.C.

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PART II

SECURITIES AND EXCHANGE COMMISSION

■

UTILIZATION OF MEMBERSHIP ON NATIONAL SECURITIES EXCHANGES FOR PUBLIC PURPOSES

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-9950]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Utilization of Membership on National Securities Exchanges for Public Purposes

I. *Introduction.* The Securities and Exchange Commission, pursuant to the authority vested in it by the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., and particularly sections 23(a), 2, 6, 11, 17, and 19 of the Act, 15 U.S.C. 78w(a), 78b, 78f, 78k, 78q, and 78s, has adopted Rule 19b-2 under the Securities Exchange Act, 17 CFR 240.19b-2, effective March 15, 1973, to reflect the Commission's policy determinations, previously enunciated,[1] that: The Nation's securities exchanges are affected with and intended to be responsive to the public interest; that membership on such exchanges should carry with it an obligation to serve investors dealing on those exchanges; and that membership utilized primarily for the purpose of proprietary trading for the account of the member or for an account in which it has an interest or for the purpose of rebating or recapturing commissions charged on exchange securities transactions, directly or indirectly, is inimical to the protection of investors, fair dealing in securities traded in upon such exchanges, the fair administration of such exchanges[2] and the interests of the public investors we are mandated to protect in the development of a central market system for listed securities.

The Commission's action follows years of intensive study of the issues involved and the views of the industry, the Nation's registered securities exchanges, public investors, other governmental agencies and all other interested persons who made their views known to us.[3] The action taken today in adopting Rule 19b-2 is not intended to and could not, in light of shifting currents and patterns in the structure of the Nation's securities markets, be a definitive resolution of the problems facing the securities industry in this area. Rather, the Commission's action reflects a much-needed first step in the restructuring of our securities markets and the manner and place of the conduct of securities transactions. The formulation of an integrated and coordinated system of securities markets, often referred to as a central market system, first urged by the Commission several years ago,[4] is in actual preparation;[5] the Commission's action today is consistent with, and an integral part of, concerted efforts to effectuate such a central market system,[6] and must be viewed in that context as part of "the regulatory work for which [the Commission] was constituted, in an area of market action which cries out for some rational plan."[7]

The rule adopted today differs in some respects from the rule initially published for public comment[8] as well as the rule each national securities exchange was requested to adopt,[9] and these differences are set forth in detail below.[10] We have not, in adopting Rule 19b-2, foreclosed the possibility that further changes may, after experience with the rule is gained and after the emerging structure of a central market system is more sharply delineated, be necessary or appropriate. We expect to monitor carefully the implementation, operation, and effects of this rule. In an area of activity as dynamic and complex as this, there may not be any permanent resolution of industry problems; as conditions change, existing problems may be superseded by new problems, and existing "solutions" may be rendered obsolete. The effective utilization of administrative responsibility and pervasive regulatory oversight demands that the agency charged with oversight of an entire industry, such as the Commission,[11] remain to these changing patterns and problems. We intend to do just that. But the very purpose and nature of administrative agencies[12] demands that current industry problems be fased and dealt with as expeditiously as possible and that the administrative authority not abdicate its clearly defined obligation to act.[13]

The regulatory process recognizes the validity of and necessity for agency testing as long as the regulated industry's problems remain unresolved. We recognized as much when we announced our proposal to adopt Rule 19b-2:

> The Commission recognizes that at this time, and without the benefit of flexible experimentation, attempts at definitive answers or solutions to all of the issues raised by exchange membership for other than public purposes are, of course, impossible. By proposing the rule set forth herein and publishing for comment a number of important related policy questions so that all persons who have helpful viewpoints to express may do so, it is hoped and expected that, by the use of the Commission's quasi-legislative powers, guidelines for appropriate experimentation and, ultimately, principles to implement the development of a central market system will evolve.[14]

In this context, the comments of the Supreme Court on agency testing and experimentation, made with respect to the broad rule making authority of another administrative agency, the Federal Communications Commission, appear particularly apt here:

> It would be sheer dogmatism to say that the Commission made out no case for its allowable discretion in formulating these regulations. Its long investigation disclosed the existence of practices which it regarded as contrary to the "public interest." The Commission knew that the wisdom of any action it took would have to be tested by experience: "We are under no illusion that the regulations we are adopting will solve all questions of public interest * * *. Such problems may be examined again at some future time after the regulations here adopted have been given a fair trial." * * * The problems with which the Commission attempted to deal could not be solved at once and for all time by rigid rules of thumb. The Commission therefore did not bind itself inflexibly to the * * * policies expressed in the regulations * * *. If time and changing circumstances reveal that the "public interest" is not served by application of the regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.[15]

The Commission, of course, expects and requests that its efforts to monitor the operation of Securities Exchange Act Rule 19b-2 will be assisted by cooperative efforts of the various registered securities exchanges, members of those exchanges and members of the investing public.

We recognize that a number of persons who commented on our rule, concerned about its impact on their ultimate status,[16] have criticized or made suggestions concerning various aspects of this thorough and lengthy proceeding, from the procedures employed and the scope of our authority to various of the substantive provisions of the rule as proposed. We have carefully considered all comments, weighing them against our statutory and regulatory obligations and objectives and, where we found it appropriate to do so, have modified our rule. Throughout our consideration of these complex matters, however, our focus has been on the public interest the Commission has been mandated to uphold in regulating our securities markets. The standards to which we have looked—the public interest, protection of investors, fair dealing in securities traded in upon exchanges, and the fair administration of exchanges—are as broad as the Act itself; but the accumulated expertise of the Commission and its staff permits these terms to be viewed and applied in their appropriate context.[17]

In order that the basis for our policy determinations be made clear, we have set forth, in some detail, the various considerations that have helped shape Rule 19b-2. While it is not possible in what is already a lengthy release to state detailed views concerning each and every one of the many suggestions we have received, we have attempted to furnish an indication of our reasoning wherever appropriate. In this release, we also set forth the background leading up to the adoption of Rule 19b-2 and discuss the statutory and procedural provisions relevant to our actions.

The remainder of this release is structured as follows:

Section II, *Synopsis of Securities Exchange Act Rule 19-2*, pp. 3902-3903.
Section III, *Background*, pp. 3903-3906.
Section IV, *Regulatory Objectives of the Securities Exchange Act*, pp. 3906-3909.
Section V, *Statutory Authority*, pp. 3909-3912.
Section VI, *Procedures*, pp. 3911-3914.
Section VII, *The Utilization of Exchange Membership*, pp. 3914-3919.
Section VIII, *Analysis of Securities Exchange Act Rule 19b-2*, pp. 3919-3924.
Section IX, *Competitive Considerations*, pp. 3924-3927.
Section X, *Test of Securities Exchange Act Rule 19-2*, p. 3928.
Section XI, *Conclusion*, pp. 3927-3928.

II. *Synopsis of Securities Exchange Act Rule 19b-2.*[18] Prior to this adoption of Securities Exchange Act Rule 19b-2, the Nation's registered securities exchanges[19] had varying rules governing the requirements of exchange membership. Some exchanges denied membership to any person or entity whose so-called "parent"

See footnotes at end of document.

was not also engaged in a securities business.[20] Some exchanges permitted any person or entity to obtain membership, without any requirement that the membership so obtained be employed for public purposes.[21] And other exchanges adopted various rules falling somewhere in between these extremes.[22] As adopted, rule 19b-2 requires each securities exchange registered with the Commission to make exchange membership available to any person or entity, assuming minimum standards of financial responsibility and competency are met, provided only that each member demonstrate his commitment to compete for the public's exchange securities business. Thus, rule 19b-2 requires each registered securities exchange to adopt, no later than March 15, 1973, a rule or rules specifying that every member of an exchange must have, as the principal purpose of its exchange membership, the conduct of a public securities business.[23] An exchange member is deemed to have such a purpose if at least 80 percent of the volume of its securities transactions on all registered securities exchanges effected by the member is effected for nonaffiliated persons or is effected pursuant to certain transactions deemed by the Commission to contribute to the public nature of the securities markets or to be in the public interest.[24]

The rule defines affiliation in terms of (i) control;[25] (ii) any account in which principal officers, stockholders or partners of the member have a direct or material indirect beneficial interest;[26] and (iii) any investment company of which an exchange member or any person controlling, controlled by or under common control with such member is an investment adviser.[27]

The rule also requires the exchanges to provide in their rules for an explicit 3-year phase-in period,[28] to accord members of exchanges who attained their membership prior to the date of the adoption of rule 19b-2 an opportunity to conform their utilization of exchange membership to the public purposes the rule seeks to implement, without undue hardship. Thus, any exchange member that acquired its exchange membership prior to the adoption of rule 19b-2 may be presumed, for up to 3 years, to have as the principal purpose of its membership the conduct of a public securities business, if (1) the member, within 30 days after the adoption of the exchange's rule, furnishes a written commitment to any exchange of which it is a member to make good faith efforts to comply with the exchange's rule and accompanies this commitment with a written plan that sets forth, in detail, the steps the member intends to take to comply with the requirements of the exchange's rule; and (2) the member files with the exchange, at the expiration of each of the first two 1-year periods following the adoption of rule 19b-2, both a statement, setting forth the steps that already have been taken which shall lead to compliance with the requirements of the exchange's rule, and an updated plan, specifying the future action the member intends to take in order to achieve compliance with the exchange's rule.[29] By the expiration of the third 1-year period following the adoption of rule 19b-2, all exchange members shall be required to demonstrate that their operations conform to the public nature of securities exchanges.

Plans filed in compliance with the 3-year phase-in period provided by the exchange's rule must be reviewed by the exchange to which it is submitted, must be found by that exchange reasonably to enable the member submitting the plan to comply with the rule and must be declared effective by the exchange. The failure of an exchange diligently and effectively to enforce any provision of a rule it has adopted pursuant to rule 19b-2, or to require diligent compliance by any exchange members with the terms of an effective plan filed by such member with the exchange, constitutes a violation of rule 19b-2.[30]

III. *Background.*[31] The adoption of Securities Exchange Act Rule 19b-2 reflects the culmination of a segment of regulatory processes concerning the functioning and structure of our securities markets; it follows extensive hearings and studies conducted since 1968 by the Commission and Congress concerning market structure and market operations,[32] and each of these studies and hearings has furnished us with useful information which we have considered and weighed in formulating Rule 19b-2.[33] But, our rule also reflects the inception of regulatory processes concerning market structure and organization, because it is but one facet of our continuing efforts to establish a viable central market system. In this section of the release, we set forth a history of the "extensive hearings"[34] which have led up to our policy conclusion that the exchanges of this Nation are rightfully part of the public domain and should not be used in any manner that would undermine the basic responsibility of exchanges to public investors.

The Commission's preoccupation with market structure and the trading patterns and functions of exchange members is, of course, by no means a recent development. From the inception of its administration of the Securities Exchange Act, the Commission has studied and induced changes in exchange rules and practices governing the trading activities of exchange members.[35] Since that time, the Commission has conducted a number of reviews of market practices to determine whether further changes in the structure and operations of the industry and the exchange markets in particular appeared "necessary or appropriate,"[36] including a congressionally mandated report on the feasibility of segregating broker and dealer functions of exchange members[37] which was aided by the initial Commission foray into the realm of the exchanges' regulation of their members discussed above.[38] The purpose to which exchange membership should be put, then, have reflected a continuing preoccupation of this agency.

The most recent inquiry of the Commission, the one with which we are here concerned, commenced early in 1968. By that time, it had become apparent to the Commission[39] and the Congress[40] that the National's markets were increasingly becoming the trading place of large financial institutions.[41] The increase in institutional trading increased the strain on the rigid minimum commission rate structure, adopted in 1972 by the New York Stock Exchange (sometimes hereinafter referred to as the NYSE),[42] and followed by all other national securities exchanges.[43] At that time, early 1968, there were no discounts based on the volume of securities transactions, notwithstanding the fact that, typically, economies of scale might be present in larger transactions which permit the execution of large transactions at substantially lower per share cost than the fixed minimum rate permitted exchange members to charge.[44] Similarly, exchange rules failed to distinguish between different types of professional nonmembers; all exchange nonmembers were required to pay the same fixed minimum commission rate.

The increase in the institutional commitment to the equity securities markets, coupled with the fact that the fixed minimum commission rates charged on institutional-sized orders were wholly unrealistic in most cases, caused institutions and other large traders to seek means of circumventing the fixed commission structure of all exchanges, principally through "give-up"[45] and reciprocal[46] practices.

While these reciprocal and give-up practices could have been used to reduce the costs paid by the constituents of these large institutions; the mutual fund shareholders; pension fund members; and others, in fact, it generally was acknowledged that the managers of these pools of money, most directly, managers of mutual funds were at that time using these redirected funds for purposes of rewarding brokerage firms that sold mutual fund shares.

Rather than compete in terms of real price, service, and other meaningful factors, the exchanges had, in effect, established a minimum fixed commission and then competed in methods of assisting only large investors to circumvent the fixed minimum commission charges.

The Commission noted that these factors: increasing institutionalization of the markets; maintenance of fixed minimum commission rates; and reciprocal and give-up practices; all had contributed to drastic shifts in the nature, structure, and fairness of the markets.[47] Accordingly, and because the Commission believed it "appropriate that all interested persons have an opportunity to comment * * *," the Commission published for comment, among other things, a proposal by the New York Stock Exchange contemplating such matters as volume discounts, access to the exchanges for qualified nonmember brokers and dealers in securities through a professional discount and "a prohibition of

procedures by which institutional investors may recapture a portion of the commissions paid by them * * *."[48]

As a result of information obtained from this initial inquiry, the Commission announced the institution of a public investigation in May 1968.[49] The Commission's primary focus was on the question "whether any changes should be made in the rules, policies, practices, and procedures of registered national securities exchanges respecting commission rate structure" in order "to assist the Commission in the discharge of its responsibility under section 19(b) of the (Securities) Exchange Act and other provisions of the securities laws."[50] Among the issues specified by the Commission at that time as a subject of the public hearings were

(iv) membership by financial institutions, (v) economic access to exchange markets by nonmember broker-dealers, (vi) competition among exchanges and among exchanges and other markets, and (vii) the necessity for restrictions on access of exchange members to the third market.[51]

In describing the procedures to be employed in the conduct of this hearing,[52] the Commission emphasized that "the public hearing will be evidentiary in nature."[53] The Commission further specified that:

The Commission staff will initially adduce evidence by calling witnesses to testify and to present documentary evidence * * *. Since the proceeding is investigatory rather than adversary it does not present specific issues for determination. Nevertheless * * * the Commission solicits the cooperation of interested persons to come forward with evidentiary facts for inclusion in the record of hearing. * * * An opportunity will be given to interested persons to suggest avenues of inquiry and, in the discretion of the hearing officer, to testify on any matter contained in the Order. * * * In addition, interested persons shall be entitled to suggest questions to be asked of particular witnesses and, in the discretion of the hearing officer, to testify in response to the evidence adduced.[54]

Thereafter, the Commission scheduled various hearings on the broad issues enumerated above to take the testimony of interested persons, including "[c]ertain financial institutions that are members of national securities exchanges * * *," who were called upon "to testify to give information about the methods by which financial institutions have gained access to exchange markets through subsidiary or affiliated membership."[55]

Although these proceedings initially were concerned solely with the reasonableness of fixed commission rates and the apparent circumvention of rules fixing minimum commission charges by a number of exchanges, it soon became clear that the Commission's focus of inquiry would have to be substantially broader. Thus, in October 1968, the Commission announced[56] that

representatives of various national securities exchanges, third market makers, institutions and other interested persons will be afforded an opportunity to offer relevant economic and legal testimony and to present documentary exhibits for inclusion in the record concerning * * * (b) exchange membership by financial institutions, (c) the necessity for restrictions on access of exchange members to the third market, and (d) competition among exchanges and among exchanges and other markets. Among the germane matters on which testimony should be offered are: The implications for the public and the securities industry of multiple markets versus a single market in listed securities; the desirability of competing markets providing different schedules of member or non-member commissions; * * * the relationship of the third market[57] to regional exchanges; access to transaction and floor information by competing markets and others; the impact of automation on competition between markets in exchange listed securities, and related matters.

By December 1969, the Commission's public investigatory hearing had amassed "over 5,000 pages of transcribed testimony * * *" and "a significant number of exhibits (had been) received."[58] In order to facilitate the Commission's inquiry and the related policy problems, the Commission determined "to invite the submission of briefs and to hear oral arguments * * *" upon eight enumerated policy questions.[59]

Among the conclusions reached by the Commission as a result of its hearings[60] was that give-up practices should cease[61] and that "fixed [commission] charges portions of [securities] orders in excess of $100,000 are neither necessary nor appropriate."[62] The Commission indicated subsequently, however, that "[i]n light of substantial changes in trading patterns * * * and to gain further experience with competitive rates * * *" the Commission would not object to the commencement of competitive rates on portions of orders above $500,000.[63]

The Commission's rate structure and related hearings, which commenced in January 1968, continued through July 1971.[64] During that time, testimony was received from 87 witnesses, the transcript of proceedings totaled nearly 8,000 pages and was supplemented by numerous written submissions.[65] In addition, there were submitted hundreds of exhibits or other documentary evidence.[66] Throughout the Commission's investigatory hearings concerning the rate structure for exchange transactions and related matters, the Commission stressed competitive factors[67] and "the need for member firms to * * * service (adequately the small investor.[68] At the same time that the Commission was conducting its review of the rate structure of the Nation's stock exchanges, as well as the general operational structure of those securities markets, the Congress authorized the Commission to conduct a detailed "study of institutional investors and the effect of their transactions on our securities markets * * *."[69] The need for this study was explicitly noted by both congressional committees that considered its authorization. First, the increase in the so-called institutionalization of the markets and the lack of reliable information were cited:

The growth of institutional participation in the stock market has more than tripled during the past decade. Information presently available indicates that the total value of outstanding stock held (at the end of 1967) by (institutions was) * * * approximately $230 billion or about one-third of the total stock then outstanding.

Coupled with this increase in holdings many institutional investors have tended in recent years to engage in short-term trading and rapid portfolio turnover * * *.[70]

Congress' concern over these recent trends reflected the view of the authors of the Securities Exchange Act in 1934[71] that the Nation's securities exchanges were not and should not be transformed into the private trading ground of one class of economically powerful investors.

The growth and change in institutional participation in our securities markets should not be ignored. * * * The impact of the securities transactions of institutional investors has a significant effect on our entire economy. * * *

* * * * *

It is clear that financial institutions have an important impact upon the stock market. The stock exchanges were designed to be central auction markets handling a large number of orders. These orders were each relatively small in size and came from many individual investors who bought and sold for a variety of reasons. Institutions, however, have tended to buy and sell in large quantities and have caused the number of large block transactions to greatly increase. * * *

These institutions are also managed by professional money managers having access to the same information and who in many instances analyze this information in the same manner. There is thus the likelihood that several institutions will make similar investment decisions at or about the same time. Such activities have thrown considerable strain upon the mechanism of the stock exchanges. The committee therefore, expects the Commission to study the performance of the stock markets under these conditions and the ways and means by which the exchanges as well as other securities markets can better adjust themselves and their procedures to the impact of institutional trading.[72]

The Commission's "Institutional Investor Study" took approximately 2½ years to complete. When the Commission transmitted its study to Congress in March 1971, we had collected more detailed data on the composition, nature, trading patterns, performance, and impacts of financial institutions than had been previously available in composite or any other form. A number of conclusions from this economic study are of immediate relevance here.

As had been surmised,[73] institutional shareholdings and trading had been on a marked upswing,[74] institutions were found, over the short run (less than a month's time) to be either net buyers or sellers.[75] Accompanying these net trading imbalances were "substantial market impacts * * *" that paralled the institutional net imbalance—that is, if institutions were net buyers of securities, prices tended to rise; conversely, if institutions were net sellers, prices tended to decline.[76] In all instances, the market evened out, and shortrun price impacts were, on the whole, eradicated, over a longer period of time.[77] The Study concluded that, contrary to some suggestions that had been made prior to the Study's completion,[78] institutions were unable to

See footnotes at end of document.

trade solely by themselves, that they were dependent upon smaller, noninstitutional investors to offset their trading imbalances and that these smaller investors were essential to the marketplace for purposes of stability and liquidity.[79]

In the light of its then just completed rate structure hearings[80] and the call of the "Institutional Investor Study" for further study to determine the feasibility and scope of a central market system and related issues,[81] the Commission, in October 1971, commenced a detailed public investigatory hearing on the future structure of the securities markets.[82] The Commission called for the presentation of detailed written and oral testimony, evidence, data, and opinion on the following issues, among others:

(1) The desirability, structure and means of developing a national system of securities exchanges and the relationship of such a system to other securities markets.

(2) So-called "institutional membership" on exchanges including (i) exchange membership by financial institutions * * *; (ii) exchange membership by affiliates of financial institutions such as their investment advisers, managers, parents, subsidiaries or other affiliates, who may utilize such memberships either to execute fortfolio transactions for an institutional affiliate or in one way or another to facilitate the recapture of commissions by an institution or to conduct a general securities business as an exchange member, or any combinaiton of the foregoing; (iii) exchange membership by other organizations whose primary business may not be that of a broker or dealer or their affiliates; (iv) whether and the conditions under which any of the foregoing persons should be permitted to engage in the business of a broker or dealer in securities (aside from acting as underwriters for the shares of one or more investment companies);

(3) Restrictions on access of nonmembers to exchange markets and of exchange members to the third market;

* * * * *

(6) Competition among exchanges and between exchanges and other markets.[83]

The Commission's hearings on market structure lasted 2 months.[84] During that time, 81 persons presented six volumes of written and 3,907 pages of oral testimony.[85] The self-regulatory bodies, member firms of exchanges, investment advisers, institutions, third market firms and others were all afforded and utilized an opportunity to set forth in great detail their reactions to the broad issues raised by the Commission and to issues not raised by the Commission but which they believed were appropriate for the full hearing accorded by the Commission. Many of the persons proffering evidence had already been heard on the record during our rate structure hearings and would be heard again during our extensive hearings on the specific proposals contained in Securities Exchange Act Rule 19b-2.[86]

Prior to the completion of the Commission's market structure hearings, the Commission transmitted to the Congress its Study of Unsafe and Unsound Practices of Brokers and Dealers,[87] pursuant to section 11(h) of the Securities Investor Protection Act of 1970.[88] The report "studied the record and experiences of 1967–1970 (described by the report (p. 1) as "the most prolonged and severe crisis in the securities industry in 40 years") to define what went wrong and to identify the conditions and practices of the industry which permitted things to get out of control."[89] The crisis centered around the massive upsurge in brokerage business, the entry into the business of new firms unequipped—by reason of insufficient capital and training—to cope with the exigencies of the times and the intricacies of the industry, and the general failure of most firms to adapt old methods of doing business to new circumstances. The Unsafe and Unsound Study thus pointed up the precarious perch of the brokerage industry, and the necessity that those persons in the business be fully and sufficiently capitalized, have professional expertise and competence and regard, as their mandate, the public interest and the public investors they serve.

The report and its genesis emphasized the importance of a sound, stable and competent professional corps of brokers and dealers in securities, fully dedicated to meeting the needs of public customers, and provided strong support for the Commission's conclusion, concurred in by many,[90] that, while negotiated rates, at least on institutional-sized orders, were appropriate, the achievement of such a rate structure should be gradual enough to permit both a careful evaluation of the shortrun impacts and longrun prospects for the brokerage industry under more fully negotiated commission rates. The study also focused the Commission's attention on the fact that unregulated entry into the securities brokerage industry was an evil to be avoided at all costs.[91]

In February 1972, the Commission issued its broad-ranging "Policy Statement," reflecting the culmination of its studies of nearly 4 years.[92] The "Policy Statement" outlined the specific problems the Commission had observed in the functioning of the securities industry, including: The growing "institutionalization" of the securities markets; dispersion of trading resulting in an erosion of the public's ability to know whether best execution of orders has been obtained and impairment of the potential depth and liquidity of the marketplace; proliferation of reciprocal practices; and increased trading in listed securities not disclosed to the public.[93]

The Commission's "Policy Statement" committed us to a program of upgrading competition in the securities industry—a program we reaffirm today—consonant with our regulatory responsibilities. We enunciated our views on the most appropriate method of doing this—increasing that portion of institutional-sized orders upon which commission rates could and should be negotiated;[94] upgrading competition in the realm of the quality of service to investors;[95] and the creation of a "single central market system for listed securities."[96] Finally, the Commission rejected the concept that exchange membership should be arbitrarily limited or used for purely personal, nonpublic purposes.[97] In addition to reaffirming the Congressional goal that exchange membership be used for public purposes, the Commission also called for the elimination of the so-called "parent test"[98]—the means by which exchanges had precluded institutional affiliates from gaining direct access to the exchange marketplace. We stated:

"With respect to the * * * situation—where an institution establishes or acquires a broker-dealer doing business for the general public—we perceive no reason either of law or policy why this should not be permitted. The establishment of such a subsidiary doing a brokerage business for the public provides a useful source of permanent capital for the securities industry. This necessarily implies elimination of the so-called 'parent test'."[99]

In announcing our intention to seek the removal of barriers to access to the nation's exchanges, we reaffirmed the basic concept embodied in the Securities Exchange Act and its legislative history[100]—that the securities exchanges of this country are public institutions, not to be used for purely personal or selfish goals. Thus, we indicated our belief that exchange membership carries with it an obligation to compete for the public's business, and announced our intention to request all exchanges to adopt such a philosophy.[101] The Commission indicated that its conclusions respecting institutional membership were vital to the development of a central market system:

It is the Commission's firm view that, as a central market system develops, it should have at its heart a corps of professional brokers and market makers serving investors."[102]

The Commission recognized the interplay between fixed commission rates and pressures for institutional membership on exchanges, but concluded, as it had after the "Institutional Investor Study,"[103] that:

"[T]he problem of using exchange facilities for private purposes is broader in scope than the rate question. For we believe that membership in the market system should be confined to firms whose primary purpose is to serve the public as brokers or market makers. Stock exchanges are affected with an overriding national interest which demands that they act to maintain and improve the public's confidence that the exchange markets are operated fairly and openly. The public should have the assurance that a member of an exchange is dedicated to serving the public, and membership by institutions not predominantly serving non-affiliated customers should not be permitted to cloud this objective."[104]

We followed our "Policy Statement" with specific requests to each registered exchange to "prepare rules or modifications to existing rules" which would eliminate any parent test and prohibit the utilization of exchange memberships for private purposes.[105] The exchanges also were asked to comment on various aspects of the Commission's "Policy Statement" and to furnish us with various views, data and opinions.[106] After considering the responses of the exchanges to our initial inquiries and determining to draft a version of the rule we believed the exchanges should adopt, we again wrote to the exchanges, requesting any and all data, views and drafts they wished us to consider in framing a rule.[107] Similarly, we requested the exchanges to furnish us with detailed sta-

tistical data concerning institutionally affiliated exchange members.[108]

At the same time we were engaged in our market structure hearings, subcommittees of both houses of Congress were conducting a detailed investigation into the performance status, structure and future of the securities markets.[109] These studies focused on a number of the same issues that had been and that then were being considered by the Commission, and both subcommittees found it useful to rely upon and consider testimony and documents furnished to the Commission in the course of our hearings,[110] as well as statements and conclusions reached by the Commission as a result of its thorough investigation.[111] During the course of these Congressional hearings, the Commission was asked to testify before the Senate Subcommittee on Securities concerning two bills that had conflicting approaches to the question of institutional membership.[112] The Commission prepared a detailed and lengthy statement, setting forth the bases for its prior conclusions regarding the utilization of exchange memberships for other than public purposes, and this statement reflects our views today.[113]

As a result of these congressional hearings, both subcommittees concurred in the Commission's general view that exchanges were public institutions, not designed to be utilized for other than public purposes. The one subcommittee which has issued its final report suggested an absolute prohibition on the combination of brokerage and money management functions for an affiliated customer.[114] Legislation to this effect already has been introduced in the Senate.[115]

After considering the record of our extensive hearings, those hearings conducted by Congress, and the various replies and comments of the exchanges, on May 26, 1972, we requested each national securities exchange to adopt the substance of a proposed rule dealing with the appropriate utilization of exchange memberships by July 31, 1972.[116] We conducted informal discussions with the exchanges concerning our rule proposal, which differed in some respects from the rule we subsequently put out for public comment[117] and the rule we adopt today.[118]

On August 3, 1972, after it had become apparent that most of the exchanges had not adopted the rule suggested by the Commission, we published proposed Securities Exchange Act Rule 19b-2 for public comment, pursuant to sections 23 (a), 2, 6, 11, 17, and 19 of the Securities Exchange Act, to determine whether a rule governing the utilization of exchange membership for other than public purposes should be adopted.[119] In light of the importance of the issue, requests for comments were directed not only to the exchanges but to all members of the exchanges, financial institutions and any and all other interested persons.[120] The Commission noted that "[p]ersons commenting may feel free to submit any relevant data or other information relating to these issues, and reference may be made, where appropriate, to prior hearings, policy statements or testimony." [121] In its release, the Commission also posed six policy issues for comment.[122] After initial comments were received, we invited interested persons to submit supplemental comments, responding to any views or data already submitted, and analyzing competitive considerations of the rule.[123] Finally, the Commission conducted a week of oral presentations to consider further the views that had already been expressed. Persons making oral statements also were questioned by the Commission and its staff, and some were asked to supply data concerning their views.[124]

The foregoing recitation of the history of hearings, studies, proceedings, and legislative inquiries satisfies us that the question of exchange membership has been exhaustively considered for at least 4 years. We doubt whether any topic, and all of its concomitant ramifications, has been studied as intensively as this one, by so many different governmental bodies and individuals. In reaching our conclusions concerning any given issue, we rely not only upon formal testimony, but upon years of expertise accumulated by the Commission and its able staff. We have viewed the question of exchange membership in its broadest perspective—commission rates, the changing nature of our exchange markets, the necessity for a strong brokerage industry, and the desire and importance of maintaining investor confidence that our markets are open, honest, and fair. We are satisfied that the background we have briefly traced in the preceding pages of this release furnishes us with a sound basis upon which to draw our conclusions.

We turn now to the Securities Exchange Act, the regulatory objectives it was designed to meet, and the ample statutory and historical bases upon which we have predicted our conclusions.

IV. Regulatory Objectives of the Securities Exchange Act of 1934.[125] The Securities Exchange Act, like the Securities Act of 1933, was an outgrowth of and a response to the stock market crash of 1929 and the ensuing depression.[126] Both acts were designed to provide broad investor protection. Unlike the Securities Act, however, which was designed to insure that investors are given full and accurate disclosure concerning securities they are asked to purchase but confers no authority upon this Commission to pass judgment concerning the investment quality of securities, the Securities Exchange Act was intended to be and is a broader statute, conferring upon us affirmative and broad regulatory powers over the Nation's securities exchanges, their members, the securities traded on those exchanges, the brokers and dealers operating in the over-the-counter markets, all other securities traded in interstate commerce, and communications respecting such securities.

Prior to the stock market crash of 1929, some Members of Congress recognized that Federal regulation of securities trading was necessary.[127] Early attempts at Federal regulation, however, were, for the most part, aimed at eliminating particular abuses.[128] The Securities Exchange Act, however, was a comprehensive scheme "to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes." [129] Rather than aiming at specified abuses, as earlier unsuccessful legislation had done, the Act painted with a broad brush and established this agency [130] to carry out the broad responsibilities it created.

In this section, we trace some of the congressional concerns leading up to and inspiring the adoption of the Securities Exchange Act in 1934.

A. PRECLUDES TO FEDERAL STOCK EXCHANGE REGULATION

In 1931, the Senate authorized its Committee on Banking and Currency to investigate stock exchange practices with respect to the purchase and sale and the borrowing and lending of securities listed on stock exchanges, and to report to the Senate the results of that investigation, along with recommendations for any necessary remedial legislation.[131]

Among the abuses studied by this Senate Committee were the various techniques of market price manipulation—pools, short selling, options, matched orders—which, for the most part, were effected by or with the assistance of members of the exchanges.[132] Of these manipulative devices, stock exchange members were active in off-floor pool arrangements. A pool, as defined in the Senate Banking and Currency Committee Report, was an agreement among several people to actively trade in a security, for the purpose of driving up its market price and thereby enabling the pool members to dispose of their holdings, at a profit, to public investors who may have been attracted by the activity or by information disseminated about the stock.[133] Although some pools had been operated by persons who did not hold membership in any exchange, many exchange members were active and knowing participants in these pools and their participation was found "to entail a violation of that elementary fiduciary relation which (a broker) bears to his customers." [134] Thus, the Senate Committee stated in its report that:

> Both (a broker's) personal interest and his obligation to the other participants (in the pool) inevitably clash with the duty of unswerving loyalty and ungrudging disclosure which he owes to his customers. However honest his intentions, an interest in a pool prompts him to encourage his customers to purchase the securities which are the subject of pool operations. It is difficult to perceive how he could act disinterestedly in the best interests of a customer if such action would be inimicable to the welfare of the pool. The conclusion is inescapable

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that members of the organized exchanges who participated in or managed pools, while simultaneously acting as brokers for the general public, were representing irreconcilable interests and attempting to discharge conflicting functions.[125]

Members of exchanges who were specialists in certain securities were also found to have materially aided and abetted pool operators by using their information regarding the state of the market in a security to exercise discretionary orders, given to them by pool operators, in a manner calculated to manipulate the price of the stock in furtherance of the objectives of the pool.[126]

The report submitted by the Senate committee which summarized the results of its investigation[127] recognized that the exchanges had, on several occasions, attempted by rules to remedy some of the abuses which the Senate committee had found to be prevalent on the exchanges.[128] This congressional committee also found, however, that for various reasons, these attempts had been for the most part ineffective and were destined to remain ineffective in the absence of broad and pervasive regulation by the Federal Government. In concluding that Federal regulation of stock exchanges was both necessary and desirable, the Senate committee observed:

For many years stock exchanges resisted proposals for their regulation by any governmental authority on the ground that they were capable of regulating themselves sufficiently to afford protection to investors. From time to time, and especially during periods of popular agitation or when legislative action was threatened, the exchanges have taken steps to raise the standards for the conduct of business by their members. Such steps, however, far from precluding the necessity for legislative action, emphasized its need.

The view that internal regulation obviated the need for governmental control was unsound for several reasons. In the first place, however zealously exchange authorities may have supervised the business conduct of their members, the interests of exchanges and their members frequently conflicted with the public interest. Thus, it was amply demonstrated before the subcommittee that some of the methods employed by stock-exchange members to stimulate active trading were technically in conformity with stock-exchange rules and yet worked incalculable harm to the public. Secondly, the securities exchanges have broadened the scope of their activities to the point where they are no longer isolated institutions but have become so important an element in the credit structure that their regulation, to be effective, must be integrated with the protection of our entire financial system. Third, the control exercised by stock-exchange authorities was admittedly limited to their own members, and they were unable to cope with many practices of nonmembers, which they deplored but could not prevent. Fourth, the attitude of exchange authorities toward the nature and scope of the regulation required was sharply at variance with the modern conception of the extent to which the public welfare must be guarded in financial matters.

During the speculative orgy of 1928 and 1929, stock-exchange authorities made no substantial effort to curb activities on their exchanges. On the contrary, they conceived it as no part of their function to discourage excessive speculation or to warn the public that security values were unduly inflated.[129]

President Franklin D. Roosevelt also had recognized the need for Federal regulation of stock exchanges. In the spring of 1933, he directed Secretary of Commerce Daniel C. Roper to form a committee to study methods of regulating the Nation's stock exchanges.

The Roper Committee's report, which was transmitted to the President on January 23, 1934, recounted some of the evils that the Senate investigation had shown to have existed in connection with the trading of securities on the Nation's securities exchanges. The Roper Committee concluded that there was a strong need for Federal regulation and described the mechanism that would, in its opinion, be most effective in providing this Federal regulation, a mechanism, not surprisingly, that would be vested with broad discretion and flexibility to meet both recurrent and novel regulatory problems:

* * * Your committee believes that the most practical solution from a long-range viewpoint, assuming such legislation to be desirable, is to enact a measure which will provide a system embodying the minimum of specific regulatory provisions in the statute itself and the maximum of discretionary powers of regulation in an administrative agency.

Your committee believes that at this time a mechanism ought to be set up which is—

(a) Capable of collecting necessary information;

(b) Capable of being used to carry out a policy as it shall be developed; and

(c) Flexible enough to permit meeting of situations, both specific and general, as they shall have been fully disclosed and developed.

This conclusion is based on the fact that while it is possible to outline legislation devised to correct known wrongs, it will be of little value tomorrow if it is not flexible enough to meet new conditions immediately as they arise and demand attention in the public interest. Stock exchanges raise essentially new problems in Federal regulation. They do not present a static situation susceptible to fixed standards. On the contrary, it is a highly dynamic, ever-changing picture, subject to untold and unknown possibilities and combinations that are today unpredictable. The thing to be avoided is the placing of this complex and important mechanism in a straitjacket.

* * * * *

While it is possible to fix by law certain basic standards as a guide to conduct in the matter of regulation of exchanges, these must be limited to minimum requirements. The point specifically is that while certain provisions might be included in any regulations, such provisions should not be the only power of correction left open to an administrative agency, but it should have broad discretion to operate directly on various abuses as the future may prove them to exist. It is not proposed that the Government so dominate exchanges as to deprive these organizations of initiative and responsibility, but it is proposed to provide authority to move quickly and to the point when the necessity arises.[130]

The Roper Committee advocated the establishment of a separate administrative agency to carry out the broad regulatory functions to be designated as the "Federal Stock Exchange Authority," which would also adminster the Securities Act of 1933.[131] The Roper Committee suggested, as a primary regulatory device, that stock exchanges be prohibited from utilizing the means and instrumentalities of interstate commerce unless licensed by such an agency. The Committee contemplated that the exchanges would be held accountable for the activities of their members and, in the event that an exchange should fail adequately to discipline members who had been found to have violated the rules and regulations required by the license, the administrative agency would have the authority to suspend or revoke the license of the exchange or, alternatively, to require the licensing of the individual brokers trading on the exchange. In the latter case, the agency could refuse to license particular brokers who had violated the rules and regulations and whom the exchange had failed to discipline.[132]

The Roper Committee emphasized that, in order to implement effectively its recommendations with respect to licensing, the administrative agency must "* * * be authorized by the statute to develop and establish by its rules and regulations standards for all exchanges, their members, and security listors, which shall surpass those now required by any exchange in order to protect those using the facilities of exchanges from improper practices which have been revealed or which may, at a later date, be found detrimental by the Government administrative authorities."[133]

Seventeen days after receiving the Roper report, the President sent a message to Congress requesting legislation for the regulation of stock exchanges. He stated:

There remains the fact * * * that outside the field of legitimate investment naked speculation has been made far too alluring and far too easy for those who could and those who could not afford to gamble.

Such speculation has run the scale from the individual who has risked his pay envelope or his meager savings on a margin transaction involving stocks with whose true value he was wholly unfamiliar, to the pool of individuals or corporations with large resources, often not their own, which sought by manipulation to raise or depress market quotations far out of line with reason, all of this resulting in loss to the average investor, who is of necessity personally uninformed.[134]

On March 26, 1934, the President sent duplicate letters to Duncan U. Fletcher, the Chairman of the Senate Committee on Banking and Currency, and to Sam Rayburn, then Chairman of the House Committee on Interstate and Foreign Commerce. The President stated:

I have been definitely committed to definite regulation of exchanges which deal in securities and commodities. In my message I stated: "It should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations." I am certain that the country as a whole will not be satisfied with legislation unless such legislation has teeth in it. Two principal objectives are, as I see it—

* * * * *

Second, that the Government be given such definite powers of supervision over exchanges that the Government itself will be able to correct abuses which may arise in the future.[135]

B. THE SECURITIES EXCHANGE ACT OF 1934

Shortly after the President's message, comprehensive bills to regulate our se-

curities markets—the immediate forerunners of the Securities Exchange Act—were introduced in both houses of Congress.[140] Some of the objectives sought to be achieved by these bills were summarized by Senator Fletcher when he introduced S. 2693:

The bill just introduced for the regulation of securities exchanges is one of the series of steps taken and to be taken for the purpose of bringing safety to the general public in the field of investment and finance. The present step is made necessary by the misfortunes of great numbers of our people who have lost part, or all, of their savings through unregulated stock exchanges. Still more, this bill has been made necessary by the needs of the entire American public that the operation of the securities exchanges shall never again intensity a business depression, or help precipitate a business depression * * *.

It is in the light of the interests of the general public that the bill was drawn. There was no desire to hurt the few hundred men who have been obtaining, year after year, princely incomes out of the pockets of the American people through the operation of exchanges not subject to Government regulation. But while there was no desire to hurt these few men, the bill was drafted on the theory that the interests of the general public are paramount and that an end must be put to any mulcting of the general public for the benefit of a few insiders. The consequence of this legislation is likely to be that the insider who has relied upon his ability to take advantage of the unprivileged outsider will suffer; but this is unavoidable if the American people as a whole are to be protected from such persons.

Although the bill does not prohibit all speculative activities on stock exchanges, its purpose is to make stock exchanges market places for investors and not places of resort for those who would speculate or gamble.

The purpose of the bill is to insure to the public that the securities exchanges will be fair and open markets. The bill seeks to protect the American people by requiring brokers on these exchanges, members of these exchanges, to be wholly disinterested in performing their services for their clients and for the American people trading on the exchanges.

Manipulators who have in the past had a comparatively free hand to befuddle and fool the public and to extract from the public millions of dollars through stock exchange operations are to be curbed and deprived of the opportunity to grow fat on the savings of the average man and woman of America. Under this bill the securities exchanges will not only have the appearance of an open market place for investors but will be truly open to them, free from the hectic operations and dangerous practices which in the past have enabled a handful of men to operate with stacked cards against the general body of the outside investors.[147]

As described above, a major objective underlying these concerted efforts to attain Federal regulation of stock exchanges was to restore in small investors the confidence that they would receive fair treatment when they participated in our capital market system. In this regard, Chairman Rayburn noted that a strong bill for the regulation of stock exchanges was necessary "in order to reestablish the faith and confidence of the people so that they will again in the future, if they forget their unhappy experience of the past, use these exchanges as a place of barter and trade for securities." [148]

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James M. Landis, a Commissioner of the Federal Trade Commission administering the Securities Act of 1933, a member of the Roper committee, and one of the draftsmen of the bills that eventually gave rise to the Securities Exchange Act, discussed two of the regulatory goals of the proposed legislation.

One is flexibility of administration. The problem is very complex, very delicate, very technical. Moreover, our knowledge about many of these things is quite inadequate. So, the flexibility and the opportunity to move rapidly, to experiment, as the exchange itself experiments, in pushing through a regulation or trying something for a time, to see what its effects are, is imperative in legislation of this type.

The second thing, and I think that every one is agreed about this, is that that being so, what is needed is to intrust the administration of an act of this type to the best possible administrative agency that can be conceived for that purpose.[149]

The bills for Federal regulation of stock exchanges, as initially introduced, incorporated the suggestion of the Roper committee that an administrative agency with broad powers be given the task of regulating the securities markets. But, as Commissioner Landis observed, the designated agency was to be given even broader powers under these legislative proposals than the Roper committee had contemplated in order effectively to oversee exchange activities:

One feature of the Roper report that runs all the way through it, which should be kept in mind, in differentiating between that report and the bill, is that the [Roper] report avowedly calls for more reliance upon the governing committees of the exchange than the bill does. The report is built upon the theory of trying to get as much self-regulation as is possible out of the exchanges, permitting the administrative authorities to come in on occasions when that self-regulation fails.

The bill, on the other hand, permits this intervention with greater ease.[150]

During the course of the congressional hearings, certain changes were made in the initial legislative proposals, in response to various criticisms that had been expressed concerning specific provisions of the proposed legislation.[151] If anything, these changes tended to expand the proposed administrative agency's broad powers. Thus, for example, one of the changes made concerned the segregation of the broker and dealer functions. Recognizing the conflict of interest inherent in those situations where a broker may occupy the dual position of agent and principal in a single transaction, the original bills proposing regulation of the exchanges required that members of the Nation's securities exchanges serve only the public by operating solely in the capacity of brokers.[152] As Thomas G. Corcoran, one of the draftsmen of this legislation, explained:

This bill says that an individual cannot be on the exchange floor, cannot even be a member of an exchange unless he is acting as a broker for the public.

The only interest the public has in a stock exchange is that it should be a place where the outside public can buy and sell its stocks. There is no public interest to be served by giving an inside seat to a small group of men who are trading for their own account.[153]

The legislation, as enacted, did not embody this rigid method of segregation. Instead, the administrative authority was granted broad power to promulgate rules designed to prevent abuses and to maintain a "fair * * * market," without being required to prohibit legitimate principal transactions which the agency found could contribute to the continuity, liquidity and fairness of the marketplace.[154] The reasons for adopting this more moderate approach were explained by Representative Lea:

When we come to the question of the broker and the dealer, a good deal of controversy was involved as to what control should be established; whether or not these positions should be separated; whether or not we would permit a man to act in the capacity of both broker and dealer; whether or not we should permit floor trading or permit specialists to be on the floor; and other problems.

In attempting to deal with these questions I am candid to admit that the committee proposed to confer a large regulatory power on the regulatory commission.

There were two reasons for this: The first was that we recognized we are not experts and tried to act with a caution becoming our inexperience. Where in doubt as to what should be done, we thought better to resolve the doubt in favor of maintaining the present business practices than to establish some fixed rule that might prove unfortunate. In the second place, where we gave the regulatory commission the power, it would be a flexible power. If the commission finds a mistake has been made, it can readily change its rules to more favorable ones and thus accomplish the purposes of Congress.[155]

Notwithstanding the fact that it had vested sufficiently broad authority in this Commission to segregate brokerage and dealer functions, Congress directed that the administrative authority conduct a study of and make a report to Congress on the feasibility and advisability of the complete segregation of the functions of broker and dealer to apprise itself whether a segregation of functions should be legislatively ordained.[156]

Although the bills for stock market regulation ultimately reported to the Congress by the Senate Committee on Banking and Currency and the House Committee on Interstate and Foreign Commerce differed in certain respects,[157] both bills embodied the concept of administrative flexibility enunciated in the Roper Report and expanded in the original versions of the bills. The Senate Committee acknowledged that:

From the outset, the committee has proceeded on the theory that so delicate a mechanism as the modern stock exchange cannot be regulated efficiently under a rigid statutory program. Unless considerable latitude is allowed for the exercise of administrative discretion, it is impossible to avoid, on the one hand, unworkable "straitjacket" regulation and, on the other, loopholes which may be penetrated by slight variations in the method of doing business. Accordingly it is essential to entrust the administration of the act to an agency vested with power to eliminate undue hardship and to prevent and punish evasion. Of course, well defined limits must be indicated within which the authority of such administrative authority may be exercised.[158]

And, as the House Committee noted in its report:

"* * * Representatives of the stock exchanges constantly urged a greater degree of flexibility in the statute and insisted that the complicated nature of the problems justified leaving much greater latitude of discretion with the administrative agencies than would otherwise be the case. It is for that reason that the bill in dealing with a number of difficult problems singles out these problems as matters appropriate to be subject to restrictive rules and regulations, but leaves to the administrative agencies the determination of the most appropriate form of rule or regulation to be enforced. In a field where practices constantly vary and where practices legitimate for some purposes may be turned to illegitimate and fraudulent means, broad discretionary powers in the administrative agency have been found practically essential, despite the desire of the Committee to limit the discretion of the administrative agencies so far as compatible with workable legislation.[159]

The House Committee recognized that broad federal regulation of stock exchanges was mandatory inasmuch as

"* * * the exchanges are public institutions which the public is invited to use for the purchase and sale of securities listed thereon, and are not private clubs to be conducted only in accordance with the interests of their members. The great exchanges of this country upon which millions of dollars of securities are sold are affected with a public interest in the same degree as any other utility.[160]

In order to insure that these exchanges were operated consistently with this public interest, we were granted broad powers to effect changes in exchange rules "in any important matter * * * appropriate for the protection of investors or appropriate to insure fair dealing."[161]

That Congress intended to confer broad rulemaking authority upon the administrative agency charged with the task of regulating the Nation's stock exchanges is amply evidenced by the congressional debates on the bills. Representative Rayburn, who was Chairman of the House committee which had drafted the proposed legislation, stated:

This bill now is criticized because it gives too much power to the administrative authorities, but all through the hearings the representatives of the exchanges and the so-called "representatives of business" in this country pounded into the committee the unwisdom of particularizing in the legislation, or going further than simply fixing the outstanding standards for the administrative body to go by. We went through the bill, and everywhere that we could find a place to give authority to the Commission to make rules and regulations to govern these matters we gave it to them * * *" (Emphasis supplied.)[162]

The broad grant of rulemaking power was designed to insure that the administrative authority would have the flexibility of action which Congress recognized was essential if regulation of the stock exchanges was to be effective. As noted by Representative Mapes:

The business of stock exchanges is a very intricate and variant business, and to put rigid requirements into the law in some instances might be very unfortunate. The committee has all the way through conceded to the thought that the law should not be too rigid for the purpose of making it possible, if any requirement or rule or regulation of the (administrative authority) proved unfortunate and unworkable, to change it without going through the slow process of amending a law.[163]

The foregoing review of the intentions of the framers of the Securities Exchange Act demonstrates that Congress intended the Commission to have sufficient authority to respond flexibility through rulemaking, in a way legislation could not, to changing regulatory needs in the securities industry. The following Section discusses the nature of the Commission's grant of authority with respect to exchange membership.

V. *Statutory Authority.* Complex regulatory legislation requires a broad construction to effectuate its remedial purposes. We have already set forth the legislative concerns that prompted the Congress to adopt comprehensive legislation governing the conduct of our securities exchanges.[164] These concerns form the focal point for any inquiry concerning an agency's authority to take specific regulatory action:

Unlike mathematical symbols, the phrasing of such social legislation * * * seldom attains more than approximate precision of definition. That is why all relevant aids are summoned to determine meaning. Of compelling consideration is the fact that words acquire scope and function from the history of events which they summarize.[165]

Thus, the Supreme Court, in repeatedly sustaining agency exercises of authority over new problems, has stated:

This Court has repeatedly held that the width of administrative authority must be measured in part by the purposes for which it was conferred * * *. Surely the Commission's broad responsibilities therefore demand a generous construction of its statutory authority.[166]

In delegating authority to an administrative agency such as the Commission, Congress necessarily paints with rather broad strokes.

"A statute expressive of such large public policy * * * must be broadly phrased and necessarily carries with it the task of administrative application. There is an area plainly covered by the language of the Act and an area no less plainly without it. But in the nature of things Congress could not catalogue all the devices and strategems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaption of means to end to the empiric process of administration.[167]

In establishing a principle of judicial construction of the scope of administrative authority, therefore, the Supreme Court enunciated the following general test:

[W]e may not, 'in the absence of compelling evidence that such was Congress' intention * * * prohibit administrative action imperative for the achievement of an agency's ultimate purposes.[168]

This principle of statutory construction has been held to be fully applicable to the various acts we administer and the Securities Exchange Act in particular. Thus, the Supreme Court repeatedly has adopted a very broad construction of the Federal securities laws,[169] and even has held, with respect to the definition of open-ended terms comparable to "such matters as" or "other similar matters" that are found in section 19(b) of the Securities Exchange Act, that, if a practice (not otherwise explicitly covered by the Federal securities laws) is fraught with precisely those evils the Federal securities laws were designed to prevent, the practice shall be deemed included within the language of the Act.[170] Accordingly, the Supreme Court, in Securities and Exchange Commission v. C. M. Joiner Leasing Corp.,[171] set down the test of statutory constructions as follows:

courts will construe the details of an act, in conformity with its dominating general purpose, will read text in light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.

The Securities Exchange Act, as adopted, reflects the breadth of the regulatory objectives with which Congress was concerned, and the extent of the delegation of authority by Congress to this Commission.

The considerations Congress found compelling in structuring a mechanism for the regulation and control of the Nation's securities markets[172] are set forth in section 2 of the Securities Exchange Act.[173] In order to dispel any doubts concerning the extent and scope of the regulation and control of "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets * * *,"[174] Congress stated explicitly that its intent was "to make such regulation and control reasonably complete and effective."[175]

While Congress employed a number of devices to confer this "complete and effective" control of securities transactions,[176] of importance here is the broad power conferred upon us to adopt rules and regulations necessary or appropriate for the protection of public investors. As we have noted,[177] Congress found this method preferable to the enactment of a rigid statutory program which might have delineated statutory standards of conduct ill suited to future alterations in trading practices then dimly (if at all) perceived. Thus, a general power to "make such rules and regulations as may be necessary for the execution of the functions vested in * * * (us) by the (Securities Exchange Act)" was conferred by section 23(a) of the Act,[178] and this general rule making provision is in addition to specific grants of rule making authority contained throughout the Act. Our broad rule making power is analogous to many other statutory grants of legislative rule making power that have been held to be extremely pervasive.[179]

Section 23(a), in delegating to the Commission the broad authority to make rules and regulations, also confers power to "classify issuers, securities exchanges, and other persons or matters within (our jurisdiction)." A survey of the specific provisions of the Securities Exchange Act confirms the view that exchange members, as well as the exchanges themselves, are within the ambit of this jurisdictional grant of classification and rule making power—many sections of the Act give the Commission authority over both exchanges and their members.

For example, before the mails or any means or instrumentality of interstate commerce may be used in the operation of an exchange upon which securities are traded, that exchange either must register with, or be exempted from registration by, the Commission.[180] An exchange may register by filing a registration statement with the Commission setting forth certain information and accompanied by certain specified documents,[181] but before its registration can become or remain effective, the rules of the exchange must provide for the expulsion, suspension or disciplining of members for conduct "inconsistent with just and equitable principles of trade,"[182] the Commission must determine that the exchange is "organized so as to be able to comply with the provisions of [the Act] and the rules and regulations thereunder"[183] and we also must find that the rules of the exchange are just and adequate "to insure fair dealing and to protect investors."[184] Our authority, of course, extends not only to the registration of exchanges, but also encompasses the withdrawal of an exchange's registration—that is, an exchange seeking to withdraw its registration can do so only "upon appropriate application in accordance with the rules and regulations of the Commission."[185]

The Act also confers upon the Commission broad authority over exchanges and their members after registration has been accomplished. Thus, the Commission explicitly is empowered to regulate the manner in which exchanges and their members conduct their daily business. Both exchanges and their members are required to maintain such records and accounts as the Commission may prescribe as "necessary or appropriate in the public interest or for the protection of investors."[186] These accounts and records are subject to our examination whenever we deem it appropriate.[187]

The Commission's regulatory power over the internal affairs of exchange members extends to the prescription of rules and regulations governing a member's indebtedness, and the treatment by members of their customers' securities. Thus, we may determine precise limitations on indebtedness of exchange members[188] and we may regulate the manner in which members may commingle, hypothecate or otherwise subject to lien their customers' securities.[189]

In section 11 of the Act,[190] the Commission has been granted regulatory power with respect to the trading activities of exchange members both on and off the floor of the exchange. Section 11(a) provides, in part, that:

> The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors: (1) To regulate or prevent floor trading by members of national securities exchanges, directly or indirectly for their own account or for discretionary accounts, and (2) to prevent such excessive trading on the exchange but off the floor by members, directly or indirectly for their own account, as the Commission may deem detrimental to the maintenance of a fair and orderly market.

As we have noted,[191] the original legislative proposals for securities regulation in 1934 contained provisions which, in effect, would have limited exchange membership only to those who served the public as brokers.[192] These proposals were based on the view that there is "an inherent inconsistency in a man's acting both as a broker and dealer. It is difficult to serve two masters."[193] Congress, however, determined that complete segregation might adversely affect attempts by American business to raise new capital.

> The combination of the functions of dealer and broker has persisted over a long period of time in American investment banking and it was found difficult to break up this relationship at a time when the dealer business was in the doldrums and when it was feared that the bulk of the dealer-brokers would, if compelled to choose, give up their dealer business and leave, temporarily at least, an impaired mechanism for the distribution of new securities.[194]

Rather than cementing complete segregation into law, Congress chose to give to this Commission the power to promulgate rules and regulations designed to deal with any problems we might perceive as a result of the combination of the functions of broker and dealer[195] and, if necessary or appropriate, in some instances, to effectuate the complete segregation of these functions.

The foregoing summary of various sections of the Securities Exchange Act indicates Congress' intention to give the Commission broad and flexible power with respect to specified activities of exchanges and their members. Congress did not stop here, however. In section 19(b) of the Securities Exchange Act,[196] Congress also conferred upon us sweeping residual powers to effect changes in exchange rules.

In keeping with the broad flexibility initially recommended by the Roper committee,[197] section 19(b) first sets forth the governing criteria for Commission action—(1) "the protection of investors * * *," (2) "to insure fair dealing in securities traded in upon such exchange * * *," and (3) to insure [the] fair administration of such exchange * * *." Section 19(b) gives this Commission authority, albeit residual authority to be exercised only in the event of exchange contumacy,[198] over any matter of exchange operation which properly falls within one of the three standards enunciated above. This conclusion is further demonstrated by the fact that, in setting forth some of the areas of Commission authority, the section states only that the Commission's authority is "in respect of such matters as * * *" those specifically enumerated, confirming that they are merely illustrative.[199] The only common thread weaving the 12 enumerated subjects of Commission authority together is the fact that they each satisfy at least one of the three governing criteria set forth above.

This conclusion is further reinforced by the report of the House Committee considering the Securities Exchange Act. As that committee noted, under section 19(b)

> The Commission is empowered, if the rules of the exchange in any important matter are not appropriate for the protection of investors or appropriate to insure fair dealing, to order such changes in the rules after due notice and hearing as it may deem necessary.[200]

Similarly, the debates on S. 3420 and H.R. 9323, the companion bills passed respectively by the Senate and the House of Representatives, confirm the broad grant of authority delegated to the Commission by section 19(b). Thus, Senator Hastings, an opponent of the Senate bill, felt compelled to state that

> Section 19 is the one which gives the broad powers to the commission * * *. Of course, everybody must admit that that language (of section 19(b)), if it means anything, means that the commission is in control, and the stock exchange must do what it is requested to do by the commission * * *. (T)o be certain that everything is covered, the paragraph concludes with "(13) similar matters."[201]

During the hearings in the House of Representatives, Thomas Corcoran, an author of the bill, confirmed our expansive authority in the following colloquy with Representative Huddleston:

> Mr. Corcoran * * * (Y)ou have the power to regulate the exchanges and an essential part of the operation of exchanges is the rules for membership of the exchanges * * *
>
> Mr. Huddleston (interposing). You think that this power to regulate the exchanges includes the power to say who shall be members of the exchanges?
>
> Mr. Corcoran. I should certainly think so, because that is a part of the machinery of the exchanges.[202]

The areas listed in section 19(b) indicate a very broad range of Commission authority over exchange affairs. Section 19(b)(1) deals with financial standards for exchange members, which suggests some control over qualifications for membership. Pursuant to this subsection, the Commission may require the exchanges to limit their membership to those persons exhibiting appropriate financial integrity, and the definition of what constitutes financial integrity, under such circumstances, would be determined by the Commission. Similarly, section 19(b)(4) gives the Commission explicit jurisdiction over hours of trading; subsection (5) gives the Commission jurisdiction over such activities as "the manner, method, and place of soliciting business * * *." These provisions of the section evidence the very broad range of topics with which the Commission may concern itself. And subsection (9) of the section gives the Commission jurisdiction over "the fixing of reasonable rates of commission, interest, listing, and other charges * * *." Not only does this specific subsection grant authority to the Commission over any aspect of exchange operations which involve commission rates,[203] but it also relates to all charges that might be made or required by an

See footnotes at end of document.

exchange, including other charges to or by its members. And, of course, the Commission is given specific authority to effect changes in exchange rules with respect to "similar matters."[224]

As noted in the "Special Study" in discussing the Commission's authority over problems such as the appropriate utilization of exchange membership,

> A further problem is that of parochialism. Securities regulation entails the adjustment and accommodation of different and sometimes competing aims and policies. The considerations involved frequently transcend the confines of a particular market or market institution, or even of the entire securities business, requiring that more general interest and policies be taken into account. But a group of exchange members or over-the-counter dealers regulating their own market, even assuming the greatest of zeal, may have no awareness of, or may ignore or even flout, these wider concerns of public interest.[225]

Finally, it should be noted that section 19(a)(1) of the Act gives us broad authority to suspend or withdraw the registration of a securities exchange where the Commission finds that the exchange has failed to comply with the provisions of the Securities Exchange Act or any rules or regulations promulgated thereunder by the Commission. The entire tenor of the Securities Exchange Act was to promote fair dealing on exchanges which, prior to the adoption of the Act, had permitted practices that had had a devasating effect upon our economy and public investors.[226] An exchange violates the provisions of the Securities Exchange Act if its practices or rules are found not to be "just and adequate to insure fair dealing and to protect investors * * *,[227] as required by section 6(d). This standard is embodied in section 19(a)(1), by virtue of section 6(d) and the general provisions of the Act. To the extent the Commission has the greater power of mandating the withdrawal of an exchange's registration for violation of the provisions of the Act or the rules thereunder, pursuant to section 19(a)(1) of the Act, we believe we also have the authority to condition a continuance of registration upon the agreement of an exchange to alter, modify, or change its existing practices or rules found to contravene the act or the rules thereunder. The juxtaposition of sections 19(a) and 19(b) in the same section confirms the view that they are alternative bases upon which to accomplish common aims. We conclude that the Securities Exchange Act accords us ample authority, under section 19(b) and other sections as well, to effect our policy objectives.

To construe these authorizations narrowly, as some commentators have suggested,[228] and to deny that the Commission has the power to insure that the securities exchanges of this Nation will function for the public good rather than for the well being of a particular class of investors, would be completely to ignore the clear legislative mandate embodied in the Securities Exchange Act as well as the Supreme Court's repeated admonition that the Federal securities laws must be broadly construed if the congressional objectives are to be achieved.[229]

The first drafts of the legislation which ultimately became the Securities Exchange Act contained authorization, in the forerunners of section 19(b), to require exchanges to adopt rules concerning the "classification of members" and the expulsion, suspension, and disciplining of exchange members. Some commentators have urged[230] that, because explicit authority over these areas was deleted from section 19(b), Congress evidenced its intent to deny the Commission any authority over exchange membership. The legislative history of the act, however, supports our view that we have authority under section 19(b) over the appropriate utilization of exchange membership and that that is a matter distinct from the "classification of members." For example, at the Senate Hearings on S. 2693, Thomas Corcoran, one of the draftsmen of the bill, was asked what was meant by the phrase "classification of membership" as contained in that bill. He replied,

> Sometimes on some exchanges you have variations in memberships. On the New York Exchange all members have equal privileges. This is not true of all exchanges.[231]

Perhaps the most telling commentary on the precise meaning of the deleted authorization concerning the classification of members came from the Commission itself. As part of the Conference Committee agreement, the authorization of Commission power over the classification of members contained in each successive draft of the House version of the Securities Exchange Act was deleted, and section 19(c) was adopted, directing the Commission to make a study "of the rules of national securities exchanges with respect (among other things) to the classification of members * * *."[232] The Commission's study was forwarded to Congress in 1935. In that study, the issue of classification of membership was divided into two topics: "A. The relationship of membership to the governing committee," and "B. The representation of classes of members on the governing committee."[233] Indeed, the most expansive reading of the phrase "classification of members" was stated by the Commission as follows:

> Whether members should be registered according to their functions and limited to the performance of one or more such functions or whether certain activities or particular members, such as floor trading upon one's account as a specialist, should be restricted or abolished * * *.[234]

The Commission declined to consider these aspects of "classification of members" in its report to Congress because, in its view, these matters were:

> The subject with which section 11 of the Securities Exchange Act is concerned. That section empowers the Commission by rules and regulations to effectuate in part these purposes, and the Commission is now concerned with devising rules relating to these matters.[235]

It is our view that Congress, by deleting specific authorization concerning the classification or discipline of members, did not intend to deny this Commission all substantive regulatory power over the rules of exchanges concerning their members. If Congress had intended to deprive the Commission of all authority over the classification and discipline of exchange members, it assuredly would have deleted the Commission's authority, pursuant to sections 11(a) and 19(a)(3)[236] concerning the activities of exchange members and their suspension or expulsion from membership, as well as the authority granted under section 23(a),[237] for the purpose of carrying out the functions vested in us by the Act to "classify issuers, securities, exchanges, and other persons or matters" within our jurisdiction. This it did not do.

Our conclusion that we have the requisite authority to adopt Rule 19b-2 finds support in the recent decision in "Robert W. Stark, Jr., Inc. v. New York Stock Exchange, Inc."[238] In that case—the only judicial decision to consider directly our authority over the utilization of exchange membership—the court concluded that:

> the rule making power of the SEC as granted to it by section 6(d) of the 1934 Act, and section 19(b) (9), (10), and (13) thereof, empower the SEC to effectuate the establishment of reasonable rules covering the * * * problem of the access by institutional investors to the national exchanges as members, or parents of member firms.[239]

The Court recognized that certain Government officials concerned with the regulation of the Nation's securities markets[240] had expressed some doubt whether the Commission has the power necessary to adopt rules respecting membership, or, assuming it had such authority, whether it should exercise it. The court, however, made clear its view that:

> there is adequate power in the SEC to take all steps necessary with respect to the access of institutional investors to the * * * (nation's stock exchanges).[241]

Accordingly, we reject the view that our authority to deal with the problem of the appropriate utilization of exchange membership is limited. It is difficult to believe that the same Congress that considered the rules of the various stock exchanges to have been "emasculated by the inclusion of restrictive phraseology,"[242] would have intended its own legislation to be read in such a restrictive manner.

VI. *Procedures.* In proposing Securities Exchange Act Rule 19b-2 for comment, we stated:

> The Commission views this policymaking proceeding as an effort to establish standards and guidelines for the future conduct of securities exchanges, recognizing that all of the issues relevant to the rule proposed for comment today are under continuous review and cannot, of course, be definitely resolved at this time * * *. Because the Commission is engaged in establishing and effectuating appropriate policy, the Commission is relying on its broad rulemaking authority and thus is invoking those procedures normally associated with its quasi-legislative functions * * *.

Since the Commission's inquiry does not call for determination of lawfulness or unlawfulness of past conduct, trial-type, adversary hearings obviously are inappropriate. The Commission's request is not concerned with the practices of a specific exchange, and the Commission is not concerned with the credibility of witnesses; it is concerned with the formulation, establishment, and implementation of policy and the rules necessary to implement it. The Commission's procedures are designed to meet that end.

Accordingly, the Commission declines to restrict the expression of views on these matters to a limited segment of the securities industry; all interested persons are invited to submit written comments.[223]

During the most recent phase of our hearings on these policy issues, a number of commentators questioned the validity of the rule making procedures we have employed.[224] In this section of our release, we discuss the principles upon which our rule making proceeding has been predicated and discuss some of the contentions raised concerning those procedures.

Our authority to adopt rules concerning the appropriate conduct of exchange members is derived, as noted above,[225] from sections 2, 6, 11, 17, 19, and 23 of the Securities Exchange Act. Each of these sections, with the exception of section 2 of the Act, which sets forth the necessity for the passage of the Act, authorizes the Commission to promulgate rules and regulations governing exchange and exchange membership activities. With the sole exception of section 19(b) of the Act, there is no mention of the procedures to be employed in the event we engage in rule making. And section 19 (b), which authorizes both rule making and adjudication, requires only that there be "appropriate notice and opportunity for hearing." [226]

We view section 19(b) as the specific embodiment of the philosophy of supervised self-regulation upon which much of the Securities Exchange Act has been predicated.[227] As the Supreme Court has noted, "The general dimensions of the duty of self-regulation are suggested by section 19(b) of the (Securities Exchange) Act * * *." [228] Thus, notwithstanding our authority to adopt rules and regulations such as rule 19b-2 under other sections of the Securities Exchange Act, we have followed the general procedures outlined in that section—that is, we first requested that the exchanges implement changes in their rules and practices on their own.[229] We adhere to the view that supervised self-regulation is an appropriate means of regulating the securities industry, and primary reliance on the exchanges enforces that concept. Nevertheless, as we have seen,[230] the Act also contemplates direct Commission action concerning a broad spectrum of matters, including membership, when reliance on the exchanges proves unavailing, and we have resorted to our direct authority as well.

The Committee on Administrative Procedure, appointed "to investigate the 'need for procedural reform in the field of administrative law,'" [231] pointed out in 1941:

The desire to work out a more effective and more flexible method of preventing unwanted things from happening accounts for the formation of many * * * Federal administrative agencies * * *. A * * * recent example is the Securities and Exchange Commission.[232]

In stressing the flexibility of the administrative branch of government, the Committee noted that "[i]f administrative agencies did not exist * * *, Congress would be limited to a technique of legislation primarily designed to correct evils after they have arisen rather than to prevent them from arising." [233]

Armed with nothing more than a broadly enunciated indication of Congressional policy, it was intended and expected that administrative agencies would carry on the Congress' work by defining standards, creating new rules, anticipating variances in industry patterns and enforcing delineated behavioral standards. Congress' delegation of authority to administrative agencies such as the Commission was designed, among other things, "to assure continuous attention to and clearly allocated responsibility for the effectuation of legislative policies," [234] and "to bring to bear upon particular problems technical or professional skills * * *." [235]

In addition to our multifaceted enforcement endeavors, we have recognized our mandate to make and implement policy. The questions with which we deal today have no "right" or "wrong" answers; rather, they may be resolved by "appropriate" formulations.[236] As former Chairman James Landis noted:

When we come to the more significant agencies it will be seen that they have as the central theme of their activity * * * the orderly supervision of a specific industry * * *. Their tasks are regulatory * * *, but * * * regulatory in a broad sense, for to them is committed the initial shaping and enforcement of industrial policies.[237]

This policymaking function of the Commission is particularly important in considering our market regulation and oversight functions. Determinations concerning the future structure of the markets, the proper role for exchanges and the responsibilities of exchange members and brokers and dealers in securities require policy decisions of the broadest nature. This view is buttressed by the fact that, as we have noted,[238] section 19(b) of the Act authorizes the Commission to change exchange rules or practices "by rules or regulations or by order * * *." As explained on the floor of the House of Representatives during the consideration of the bills which led to the enactment of the Securities Exchange Act:

When we give the Commission the right, by rules and regulations to require that an exchange shall have a certain rule governing its functions, that is a quasi-legislative power of Congress. The Commission acts for Congress in establishing such rule or regulation * * *. There would be a quasi-judicial power, perhaps, if under a rule the Commission should attempt to determine whether or not an alleged guilty man should be penalized or subjected to a fine.[239]

Although various attempts have been made through the years—on the floor of the House of Representatives during the consideration of the bills preceding the Securities Exchange Act [240] in Conference Committee,[241] and 7 years after the passage of the Securities Exchange Act [242]—to delete from section 19(b) our broad rulemaking authority, Congress has never determined to curtail the scope of our authority and discretion. Congress' insistent and consistent refusal to limit our rulemaking authority was based on its belief that administrative flexibility was essential and that the Commission would be engaged in policymaking when it established new standards for exchanges.[243]

The dichotomy between rule making and adjudication is an important one, and is reflected in the Administrative Procedure Act, as codified.[244] The Attorney General Clark, commenting on the Administrative Procedure Act's definitional dichotomy between rule making and adjudication,[245] described the distinction between these two disparate forms of agency action as follows:

Rule making is agency action which regulates the future conduct of either groups of persons or a single person; it is essentially legislative in nature, not only because it operates in the future but also because it is primarily concerned with policy considerations. The object of the rule making proceeding is the implementation or prescription of law or policy for the future, rather than the evaluation of a respondent's past conduct. Typically, the issues relate not to the evidentiary facts, as to which the veracity and demeanor of witnesses would often be important, but rather to the policy making conclusions to be drawn from the facts. Senate Hearings (1941) pp. 657, 1298, 1461. Conversely, adjudication is concerned with the determination of past and present rights and liabilities. Normally, there is involved a decision as to whether past conduct was unlawful, so that the proceeding is characterized by an accusatory flavor and may result in disciplinary action. Or, it may involve the determination of a person's right to benefits under existing law so that the issues relate to whether he is within the established category of persons entitled to such benefits. In such proceedings, the issues of fact are often sharply controverted. Sen. Rep. p. 39 (Sen. Doc. p. 225); 92 Cong. Rec. 5648 (Sen. Doc. p. 353).

Not only were the draftsmen and proponents of the bill aware of this realistic distinction between rule making and adjudication, but they shaped the entire Act around it. Even in formal rule making proceedings subject to sections 7 and 8, the Act leaves the hearing officer entirely free to consult with any other member of the agency's staff. In fact, the intermediate decision may be made by the agency itself or by a responsible officer other than the hearing officer. This reflects the fact that the purpose of the rule making proceeding is to determine policy. Policy is not made in Federal agencies by individual hearing examiners; rather it is formulated by the agency heads relying heavily upon the expert staffs which have been hired for that purpose. And so the Act recognizes that in rule making the intermediate decisions will be more useful to the parties in advising them of the real issues in the case if such decisions reflect the views of the agency heads or of their responsible officers who assist them in determining pol-

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icy. In sharp contrast is the procedure required in cases of adjudication subject to section 5(c). There the hearing officer who presides at the hearing and observes the witnesses must personally prepare the initial or recommended decision required by section 8. Also, in such adjudicatory cases, the agency officers who performed investigative or prosecuting functions in that or a factually related case may not participate in the making of decisions.[246]

Under this test, our proposal certainly reflects policymaking of the broadest nature. We are not attempting to deal with specific individuals or entities and pass judgments on the lawfulness or unlawfulness of past conduct as judged by existing legal standards; rather, our efforts have been designed to determine policy and the appropriate method of implementing that policy.[247] All persons or entities falling within the broad classes with which we are dealing—national securities exchanges and members of national securities exchanges—will be affected equally by our rule.[248]

We recognize that we could have determined to proceed against each exchange individually. Section 19(b) of the Securities Exchange Act certainly contemplates that we might bring an adversary proceeding against a particular exchange to correct or change abusive practices, and we have, in the past, utilized such a form of proceeding.[249] Similarly, we also have utilized our general rule making powers under section 19 (b).[250] Here, we do not seek to declare that current exchange practices violated existing legal standards. We seek only to formulate new standards to govern the future conduct of exchanges and their members. And, in light of our belief that a central market system must be developed, such standards should be uniform in their application to all affected by them.[251]

An oft-repeated criticism of administrative agencies has been their failure to enunciate substantive policy and future legal standards, and their overconcentration on assessing liability for past acts.[252] This Commission has been confided broad regulatory authority over the securities industry precisely for the purpose of enunciating substantive policy. We are, therefore, surprised by the number of suggestions[253] that we should conduct trial-type, adversary proceedings. As the Supreme Court noted with respect to this agency:

Since the Commission, unlike a court, does have the ability to make new law prospectively through the exercise of its rule making powers, it has less reason to rely upon ad hoc adjudication to formulate new standards of conduct * * *. The function of filling in the interstices of the Act should be performed, as much as possible, through this quasi-legislative promulgation of rules to be applied in the future.[254]

We do not believe it is appropriate to conduct adversary hearings on the broad policy questions we face today. In any event, there are persuasive reasons why rulemaking is more appropriate for the enunciation of policy than adjudicatory proceedings.

First, the Administrative Procedure Act, in its provisions governing formal rule making proceedings, requires that all interested persons be given an opportunity to express their views on a proposed rule before it is finally adopted.[255] Broad public participation in the rule making process is likely to assist the agency in formulating a practical and sound rule by eliciting comments and suggestions from those most interested in the prospective rule's application. An adversary proceedings requires the formal designation of "parties," and limits severely the persons who may participate, or who will have notice of the proceedings.[256]

Similarly, the procedures designed for determining individual liability are not necessarily well-adapted to the ascertainment of nonadjudicative matters of fact, policy, and discretion upon which rules of general application, such as Rule 19b-2, are based.[257]

Moreover, reliance upon adjudicative methods of rule making precludes the agency from utilizing those methods of gathering and assembling facts that are peculiarly appropriate to the needs and conditions of rule making. Congressional committee hearings generally, and those conducted with respect to the current status of the securities industry,[258] serve as examples of how a body having legislative responsibilities proceeds in the formulation of policy. The records of such hearings contain matters of fact, arguments of law, and considerations of policy and discretion—the views, data, and arguments of all interested persons. Thus, when we proposed Securities Exchange Act Rule 19b-2, we explicitly requested that "Interested persons * * * submit their views, any data or other comments or information * * *" to us.[259] Congress does not rely upon trial-type proceedings in order to formulate the content of legislation, and it has been recognized that agencies engaged in legislative pursuits also are not required to rely upon such trial-type proceedings.[260] An agency which limits itself to trial-type, adversary hearings, as opposed to the broad legislative, fact-finding hearings we have conducted, runs the risk of depriving itself of the wide range of considerations that must be taken into account in the rule making, in contrast to the narrowly adjudicative, process.[261]

It also should be noted that rule making through adjudication may often be a prohibitively time-consuming, costly, and inefficient method of dealing with a problem common to an entire industry. Because of the procedural rights and safeguards which are a respondent's due in administrative, no less than in conventional civil or criminal, litigation, adjudicative proceedings before an agency are, beyond a point, irreducibly slow and costly affairs. A rule making proceeding, however, affords an economical method of consolidating common issues in a streamlined, but comprehensive and fair, proceeding having few of the cumbrous attributes of litigation. Since such a proceeding does not present questions of assessing individual guilt or innocence for past conduct, the strict procedural and evidentiary requirements of litigation are inapplicable.

In light of the material advantages to be obtained from rule making in the context of general establishment of policy, it is not surprising that the Supreme Court, and critics of the administrative process, have urged the agencies to give greater emphasis to rule making proceedings.[262] Here, the problem with which we are confronted—the restructuring of our markets and the proper utilization of exchange membership in a restructured market—is a general one. It is a problem of the legal responsibilities of an entire industry, not an individual exchange. The principal considerations that must influence decision in this area: the nature of exchange markets, their legislatively mandated purpose, the scope and nature of the central market system pertain equally to all of the exchanges. The situation plainly calls for uniform, consolidated treatment, not separate lawsuits.[263]

Moreover, the problems we are dealing with raise novel issues of policy. Although, in our opinion, established legal principles support, and indeed compel, the conclusions we have reached respecting the legal duties of exchanges and their members, the application of these principles in the circumstances presented is a matter of wide interest and concern. It is fairer to the industry as well as to the public that it be approached on a uniform and prospective basis, with full awareness of what is being considered, in a proceeding specially tailored to the task of clear and comprehensive definition of the requirements of law to which the industry is to be subjected.

It is urged that our proceeding is adjudicatory because its impacts are felt most directly by one or another of the exchanges or their members.[264] We cannot agree. In the light of our broad policy formulation involving a new central market system, it seems apparent that our action today which provides clear, definitive and uniform standards will treat all exchanges and their members equally. Indeed, it should be noted that none of the exchanges has adhered in the past to the broad policy we are enunciating today.[265]

It is also suggested that section 19(b) requires an adversary hearing.[266] But, as noted above,[267] we did permit "cross-examination" of witnesses on these issues during the course of our hearings which began in 1963.[268] In any event, section 19(b) merely requires "appropriate notice and opportunity for hearing * * *." It does not require an adversary, trial-type hearing, and our view in this respect is consistent with the alternative bases in that section which authorize the Commission to proceed by rule or regulation on the one hand, or by order on the other. The Securities Exchange Act does not require that, when we engage in policymaking, such hearings as are held

be "on the record"; that omission is significant.[269]

A number of commentators suggested some issues as to which they believed cross-examination might be appropriate.[270] But none of these persons suggested why they could not supply affidavits, detailed statistical analyses or other evidentiary matters in lieu of cross-examination, if that were deemed appropriate, as we had requested.[271] Our procedures did permit supplemental comments to be filed, answering, attacking, arguing or simply commenting upon other comments received, as well as discussing competitive factors.[272] And the Commission as well as its staff did question witnesses;[273] some commentators responded to questions from our staff concerning their initial submissions with yet additional data and views.[274]

Whether or not a trial-type hearing was required, we perceive no prejudice to any commentator by virtue of what we believe have been rather thorough procedures.[275] Indeed, since the Administrative Procedure Act does not require oral hearings and supplemental responsive submissions, we presumably accorded all interested persons a greater opportunity for the expression of their views than the minimal requirements of the law.[276]

VII. *Utilization of Exchange Membership*—A. *General.* As the preceding sections attest, the issue of "institutional membership" on stock exchanges has been discussed at length by government agencies, stock exchanges, securities industry participants and public representatives. There is no real consistency, however, in the usage of that term. On the New York and American Stock Exchanges, generally thought of as prohibiting institutional membership, many members engage in an investment advisory business and also execute transactions for institutional accounts.[277] On the regional exchanges many subsidiaries of investment managers and insurance companies have purchased seats to trade for the account of the affiliated "parent" or to be used for "recapture" of commission dollars for that parent.[278] Other institutions have affiliated with bona fide broker-dealer exchange members but execute no transactions through the broker-dealer member. All of these arrangements, while different in many respects,[279] have been referred to as forms of "institutional membership" and fall within the scope of the inquiry upon which Rule 19b-2 is based.

Issues relating to the eligibility of corporate entities, such as financial institutions, for exchange membership can best be understood in the context of exchange rules which bear on that eligibility. Prior to 1970, membership on some exchanges was indirectly restricted by rules which did not permit public or corporate ownership of a member. For example, the New York Stock Exchange constitution required that every holder of voting stock of a member be an officer or employee of the member and devote the major portion of his time to its business. When the NYSE adopted rules to permit its member firms to issue freely transferable securities, the Exchange extended its "primary purpose" test to the "parent" of an exchange member.[280] Both the New York and American Stock Exchanges have contended the so-called parent test was necessary to permit adequate self-regulatory control.[281]

Most regional exchanges have generally permitted some form of institutional membership.[282] The PBW Stock Exchange requires only that a member itself be engaged in the transaction of business as a broker or dealer in securities.[283] Since the PBW Stock Exchange does not require that a member be engaged in a public securities business, entitites desiring to trade solely for their own account or the account of an affiliate are eligible.

The Pacific Coast Stock Exchange has required that all voting stockholders be active in the business of the member organization.[284] If a voting stockholder is a corporation, the rule "shall not be deemed to be met * * *, unless the principal business of that corporation and of its parents and subsidiaries and affiliated organizations, taken on a consolidated basis, shall be that of a broker-dealer in securities."[285] The board of governors has discretion to waive this requirement, however.[286]

Although the Boston Stock Exchange rules require that 80 percent of the outstanding voting stock of the member corporation be owned, and 60 percent of the total capital be contributed, by officers and directors of the corporation, the rules also provide that these requirements may be waived in appropriate instances.[287] The Boston Stock Exchange has terminated its policy of denying membership to affiliates of institutions generally, intending instead to consider such applications as they occur.[288]

The Midwest Stock Exchange requires that a member corporation be primarily engaged in a general, public securities business. The "general" requirement is satisfied if (a) a "substantial portion" of the member's business is as a broker in exchange securities and if the balance is in other activities "traditionally associated" with the investment banking or broker-dealer business and is consistent with maintaining a flow of orders to the exchange (e.g., underwriting, retailing, investment advisory activities, OTC market-making), or (b) if the member's principal business is the performance of an approved floor function (e.g., as specialist, as floor broker or as registered floor trader). The "public" requirement is satisfied if at least 50 percent of all brokerage commissions, and 50 percent of gross income from the securities business, is derived from transactions for customers other than affiliates.[289]

The Commission does not believe that members of exchanges should be prohibited from affiliating with institutions. Indeed, we have already indicated that the continuing necessity for a "parent test" does not appear to be supported by reference to the purpose or intent of the Securities Exchange Act.[290] Contrary to the view espoused by the supporters of this requirement, it would appear that exchanges do have an adequate basis for self-regulatory control over the affairs of their members through direct control of their officers and directors and ultimate jurisdictional control over their parents in appropriate cases.[291] Furthermore, since the "parent test" restricts exchange membership on the basis of whether a firm's parent is engaged in a public securities business—not whether the firm itself is so engaged—it is inconsistent with the principle that any person prepared to engage in such a business (assuming he meets objective standards of financial responsibility and competence) should be permitted to do so.[292] On the other hand, for reasons which are discussed in detail in the remainder of this section, the Commission does not believe that any entity should be permitted to join an exchange without accepting obligations and responsibilities to the exchange markets as public institutions.[293] Thus, any entity wishing to join or remain a member of an exchange must be predominantly engaged in the business of being a broker-dealer with public, unaffiliated customers and no entity or individual can be permitted to utilize an exchange membership solely for its own private trading purposes.[294] Rule 19b-2 is designed to effectuate these principles.[295]

B. *Institutional trading and the Commission Rate Structure.* The desire for institutional membership on national securities exchanges has been closely interrelated to the level and structure of exchange commission rates. The "Institutional Investor Study" transmittal letter stated:

> The Commission expects that its recent decision on competitive rates on large orders will have the effect of reducing artificial inducements to the combination of management and brokerage functions, and that this in turn will tend to reduce but not eliminate economic pressures toward institutional membership on stock exchanges. Further actions to increase the fraction of institutional transactions subject to competitive rates, of course, could be expected to further reduce such pressures. The Commission realizes, however, that issues relating to institutional membership are at least partially separable from questions regarding the level and structure of brokerage commissions and would not be disposed of entirely even by fully competitive rates on all securities transactions.[296]

The transmittal letter also noted that "practices such as the fixed noncompetitive commission rates * * * have tended to work against the development of a central market system * * *".[297] More recently, in its February 2, 1972 Statement on the Future Structure of the Securities Markets, the Commission restated unequivocally that "(f)ixed minimum commissions, at least on institutional size orders, may well make it very difficult, if not impossible, to create the central market system * * *".[298]

When the Commission began its inquiry into commission rate issues, it became immediately apparent that the phenomenon of institutional growth was

See footnotes at end of document.

having a far-reaching impact on the securities industry.[209] The rigid commission rate structure had been unresponsive to the growth of this newly important category of customer. The commission rate was based on geometric progression: A commission on a 10,000 share transaction was 100 times the commission on a 100 share transaction; the commission on 100,000 share transaction was 1,000 times the commission on a 100 share transaction. Nevertheless, the average cost of handling a 1,000 share, a 10,000 share, and a 100,000 share order of a $40 stock was estimated at approximately 6, 42, and 377 times as great as the cost of handling a 100 share order[210] (although this estimation did not reflect the additional skill, risk and responsibility that such larger orders entail).

Informal interviews by the staff indicated that, not surprisingly, on institutional size orders, "give-up"[211] practices had proliferated to a point where the fixed minimum commission rate existed in form only. On January 26, 1968, the Commission announced it was considering a proposed rule under the Securities Exchange Act, rule 10b–10, which would have prohibited investment company managers from directing the brokers executing portfolio transactions for the investment companies to give up part of their compensation to other brokers unless the benefits were to accrue to the investment company and its shareholders.[212] This rule assumed that the prevalent give-up practices would continue and dealt only with the conduct of fiduciaries in that context.

Shortly thereafter the Commission announced public hearings[213] to consider whether any changes should be made in the rules of the securities exchanges respecting commission charges made thereon. The Commission's public investigation revealed that give-up practices were indeed prevalent and that exchanges were competing with one another to liberalize rules governing give-up practices in order to attract volume.[214] Management companies were insisting on,[215] and brokerage firms cooperated in providing, giveups ranging from 50 to 90 percent of each commission dollar charged.[216] Besides the pervasive give-up practices, "service competition" among brokers was extensive.[217] The general trading practices among institutions and their brokers revealed, in short, that brokers recognized the "fat" in the institutional commission dollar and were prepared to offer either valuable services in return or to write out give-up checks to other broker-dealers as directed by the institution.

In response to the Commission's letter,[218] the New York Stock Exchange proposed, on August 8, 1968, an interim commission rate incorporating a volume discount for orders in excess of 1,000 shares and a prohibition of customer-directed giveups.[219] In light of the information collected up to that point in the hearings, the Commission accepted the NYSE revisions, which became effective on December 5, 1968.[220] Under the revised schedule, the rates in effect on large transactions (over 1,000 shares) were reduced by approximately 40 percent.[221] Moreover, where an order to a single customer would involve more than $100,000 in commission charges, figured by the minimum schedule, the amount over $100,000 would be negotiable.[222]

After the prohibition of customer-directed giveups, institutional managers wanting to distribute commission dollars in return for fund sales, research or other services gave orders directly to the broker-dealer they wanted to compensate. Thus, broker-dealers that had formerly received giveup checks from the lead or executing brokers now received orders directly from the institution and might execute the order itself or forward the order to a correspondent broker for execution and clearance.[223] Two regional exchanges split their seats just prior to December 5, 1968, in anticipation of the giveup prohibition, increasing the available membership by 100 percent and reducing the cost of membership by one-half.[224]

It was clear to the Commission that the distortions and artificial industry infrastructure created to facilitate utilization of commission dollars would continue to exist and grow unless further steps were taken to eliminate the remaining excess in commission charges on large orders. Following the implementation of the interim rate schedule, several new rate schedules were proposed by the New York Stock Exchange;[225] however, each was found to be less than wholly satisfactory.[226] On October 22, 1970, the Commission advised the NYSE that "fixed charges for portions of orders in excess of $100,000 are neither necessary nor appropriate."[227] On February 10, 1971 the Commission rejected a request for delay in the implementation of its decision to move toward competitive rates but advised the NYSE that, "in light of substantial changes in trading patterns on the NYSE and to gain further experience with competitive rates, the Commission will not object to the Exchange's commencing competitive rates on portions of orders above a level not higher than $500,000," rather than the $100,000 level previously discussed.[228] Pursuant to further Commission letters, fixed rates on portions of orders above $500,000 were eliminated on April 5, 1971.[229] As a result, commission charges on the portion of orders in excess of $500,000, the "overage," were negotiated, on average, at approximately a 50 percent discount from the post-December 6, 1968 rate schedule.[230]

The new schedule requested by the Commission on October 22, 1970,[231] was submitted on June 28, 1971.[232] On September 24, 1971, the Commission, expressed its "nonobjection" to the new rate schedule subject to several conditions which were accepted by the Exchange.[233] The new schedule contained an even greater volume discount than had obtained previously. This rate was not implemented, however, until March 24, 1972.

On February 2, 1972, the Commission announced in its policy statement its decision to further reduce from $500,000 to $300,000 the breakpoint at which fixed rates become subject to negotiation.[234] This change became effective April 24, 1972.

The Commission's progress to date has been significant and the resultant savings to institutional investors have been substantial. For example, the Commission staff has estimated that the December 5, 1968, volume discount produced substantial reductions in commission revenue to the brokerage community of approximately $175 to $180 million on an annualized basis.[235] Further, the introduction of the $500,000 level of negotiated rates resulted in an annualized revenue loss of $70 million for all NYSE member firms. After the $300,000 breakpoint was introduced, in April of 1972, the total annualized revenue reductions to NYSE member firms is estimated to increase from $70 million to $80 million.[236] These figures represent brokerage commissions which otherwise would have been paid by institutional investors, among others, under the former fixed rate structure. Exactly what further reductions, if any, will result when the breakpoint at which rates become competitive is further lowered can only be estimated. The average discount on portions of orders below $300,000, however, is expected to be less than the average discount obtained on portions of orders over $300,000.[237]

Presently the commission rate structure is far different than it was in 1968. The following table, for example, illustrates graphically the effect of the changes summarized above.

NYSE COMMISSION CHARGES ON A $50 STOCK

Period	100,000 shares	20,000 shares
Pre-December 5, 1968	$44,000	$3,800
December 6, 1968–April 1971	[238] 28,100	[239] 5,700
April 1971–March 1972	[240] 15,000	[241] 4,200
March 1972–	[242] 14,702	[243] 3,702

The institution today is receiving the equivalent of about a 67 percent discount from the minimum rate in effect in 1968 on 100,000 shares of a $50 stock, and about a 60 percent discount on 20,000 shares of a $50 stock. NYSE members fully introducing their accounts to other members have historically received a 60 percent discount. Amex associate members have also received a discount which averages about 60 percent depending on their order mix. Thus, on orders of the above size, institutions and other large investors have achieved the commission rate equivalent of pre-December 5, 1968 membership. The Commission has stated that it is embarked on a course of clear direction of lowering the competitive rate breakpoint further.[231] Now that the major share of progress has been achieved, however, it would be myopic to focus attention primarily on the interests of the institutional investor. Further lowering of the competitive rate breakpoint must be accomplished responsibly with a view to the impact that reduction has on the health of the securities markets.[232]

The Commission has been taking progressive action on many fronts which are likely to have a significant impact on the revenue and profitability of exchange members. Recently, the Commission has adopted rules on the segregation of customer securities and credit reserves for customers' cash held by the broker.[233] The Commission has proposed a uniform and more exacting net capital standard for all broker-dealers, including members of exchanges that had heretofore been exempted from the operation of the Commission's rule.[234] The Commission has also requested the NASD to promulgate regulations prohibiting investment company sales reciprocity.[235] The NASD and the Commission have studied the present level of investment company sales charges and the impact of the removal of section 22(d) of the Investment Company Act, and the Commission is now preparing to hold public hearings on the justification for retail price maintenance in the distribution of mutual funds.[236] In addition, exchange members will continue to be burdened by the need to modernize operations and rising costs of doing business generally.

The Commission believes it is necessary, as a matter of public policy, to implement lower competitive rate breakpoints on a prudent and gradual step-by-step basis, while maintaining active and continuous programs to monitor the impact and interelationship of all these changes in order to minimize possibly damaging consequences. Even those commentators most vocal in support of fully competitive rates have agreed that the implementation thereof must be completed in a time frame which permits an orderly transition.[237] To the extent that most, or even a large percentage of, institutions were to seek exchange membership for recapture purposes, however, that would be tantamount to competitive rates (or no commissions at all) on all size orders for those institutions immediately; the Commission's phase-in program would then become an academic exercise, at best.[238]

Just as the Commission believes it would be highly irresponsible to implement completely competitive rates for all institutions immediately, it would be equally irresponsible to permit unlimited institutional membership. Apart from the blatant discrimination in favor of a limited group of investors, such a precipitate move would be irreversible. Rule 19b-2, on the other hand, prevents, inter alia memberships designed to achieve preferential commission rates and is, therefore, one of the bases upon which further steps in the implementation of competitive rates may be taken equitably. Exchange membership for recapture purposes impedes the Commission's ability to implement lower breakpoints for all large investors, thus perpetuating the investment advantage that certain institutions have over nonmember investors. A more even-handed course, in the Commission's view, is for all large investors to accept a gradual introduction of lower breakpoints and to reap the incremental benefits of each successive breakpoint reduction equally.

C. *Trading fairness.* The removal or limitation of the special trading advantage which any one group or classification of investors holds over another, so as to establish honest and fair markets in which all public investors may act on investment decisions with confidence, is a theme the Commission has consistently sought to emphasize.[239]

This concern was explicitly stated by Congress in 1934 as to those investors having such a close relationship to the business affairs of a corporation that they obtained a significant information advantage over other investors. The Senate Committee report on stock exchange practices stated:

> Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others.[240]

Section 16 of the Securities Exchange Act was designed to deprive officers, directors and substantial stockholders of any incentive to abuse their position by trading in the securities of the corporation on information not known to the public. Sec. 16(a) requires reporting of these transactions (in the hope that the elimination of secrecy surrounding them will be some deterrent), sec. 16(b) purges profits from certain short-swing transactions and sec. 16(c) flatly prohibits other transactions.[241] A fundamental tenet of the philosophy on which sec. 16 is based is that its restrictions are to apply, whether or not any actual utilization of inside information has occurred, because of the potential for abuse.[242]

Perhaps the Commission's Special Study of the Securities Markets has described this general theme best:

> Section 11 of the Exchange Act vests the Commission with broad powers to regulate or prevent principal transactions by exchange members on the floor of an exchange. It is clear that one of the major legislative concerns underlying this broad grant of power was that benefits derived by the public from member trading on exchange floors were not in balance with the advantages derived by the preferred groups. Viewed in this light the broad scope of the section is thoroughly consistent with one of the dominant themes running through the series of statutes administered by the Commission—denial of special advantage in the public interest and for the protection of investors. The equality of access to full and accurate corporate information sought to be guaranteed by these statutes is complemented by the specific provisions of the Exchange Act which seek to provide open and honest markets in which investment decisions may be acted upon. In its administration of the statutes the Commission has shown that the guiding concepts are dynamic and not static. If anything, there has been an increasing emphasis of fairness and equality. A recent case, for example, has made it clear for the first time that a broker in possession of important nonpublic corporate information is under severe limitations as to the use of his knowledge in the marketplace. (Citing, In the Matter of Cady, Roberts, & Co., 40 S.E.C. 907 (1961) a landmark case under section 10(b) of the Securities Exchange Act.) * * *. Although the context and quality of floor information and the 'lead time' of a trader on an exchange floor may be different from the information and advantages noted in these cases, the principal remains the same."[243]

In citing the "Cady, Roberts" case, the Special Study staff could hardly have realized the extent to which this doctrine would be used to provide broad protection for public investors against the misuse of material inside information.[244] Rule 10b-5[245] has been interpreted to provide,

See footnotes at end of document.

among other things, that neither the insiders of a corporation nor their "tippees" may use nonpublic material information received by virtue of their special position to profit at the expense of public investors.[246] The purpose of this antifraud provision has been stated by one court as being "to promote free and open public securities markets and to protect the investing public from suffering inequities in trading."[247]

Similarly, Securities Exchange Act Rules 10b–4[248] and 10b–13[249] are designed to insure the fair treatment of shareholders in a tender offer. Rule 10b–4 prohibits the short tendering of securities involved in a tender offer, a practice which often resulted in the less sophisticated public investor losing an opportunity to participate.[250] Rule 10b–13 prohibits any person making a tender or exchange offer from purchasing any such security otherwise than pursuant to the stated terms of that offer. This rule insures that all investors tendering their shares pursuant to a tender offer will be treated equally and that no class of investors will receive a better price for tendered shares than others.[251]

Apart from price advantages and material inside information about the affairs of a particular corporation, it is clear that certain market information may be used by professionals to gain a trading advantage over public investors. For example, the knowledge that an investment company was about to embark on a program of acquisition of a certain security would alert knowledgeable traders to an investment opportunity resulting from anticipated market trading pressures, in this instance significant demand. Accordingly, the Commission has proposed a rule which would prohibit certain "insiders" of investment companies from trading in stock held or about to be acquired by the investment company.[252] Another type of market information which may be used to the advantage of a special group of investors is advance knowledge of a forthcoming research recommendation on a particular security from a widely followed source. If that report or idea supports a strong buy or sell recommendation, those having knowledge of the report might be in a position to profit by subsequent market activity in the security. A rule under the Investment Advisers Act,[253] therefore, requires the adviser to make and keep detailed records of all his transactions of officers, directors, and partners of the adviser and the transactions of employees who participate in the determination of a recommendation or who, in connection with their duties, obtain information concerning the recommendation.[254] Moreover, in some circumstances this kind of "scalping" has been held to be a violation of the antifraud statutes.[255]

The Commission's concern for the fair and equal treatment of all investors has also lead to a continuing analysis of exchange rules regulating specialist trading, block positioning, floor trading and off-floor trading regulations, since it is in the center of the exchange marketplace where the potential use and misuse of market information resulting from trading activity in a particular security is most susceptible to exploitation.[256] The Commission's struggle to make specialist and floor trading regulation, in particular, firm and effective is an important chapter in the history of exchange regulation.

The trading advantages which are obtained with membership on an exchange are considerable. All members of an exchange, of course, have a significant trading advantage over nonmembers by virtue of their lower commission costs. For example, a nonmember buying and then selling a round-lot of a $40 stock on the New York Stock Exchange during the same day will pay $116 ($58 for the $4,000 purchase and $58 for the $4,000 sale).[257] A member trading from off-floor can effect the same purchase and sale for $6.45 even if he clears through another member and hires an independent floor broker.[258] A floor trader is able to effect the same day purchase and sale for a clearance fee: $2.25.[259]

In addition, the informational and proximity advantages of membership provide exchange members with opportunities to maximize the profitability of investment decisions. For example, a floor member:

> Sees instantly the outbreak of activity in a stock, the nature of the trading and the direction of prices. He is in a position to discount or revise his market appraisals almost instantaneously. Upon the basis of information which he derives while on the floor of an exchange he can increase, decrease, or cancel his orders more rapidly than a nonmember to whom the same information is only made available at a later time. This is particularly true when the "tape is late" i.e., when reports of transactions which are conveyed to the outside world by means of a ticker system are delayed because of unusual activity on the floor. During such periods the member on the floor has immediate knowledge of the latest prices while the nonmember must rely upon prices which may no longer be current.[260]

The Commission's Special Study of the Securities Markets also recounted the advantages of being on the floor of an exchange:

> Members on the floor have access to much greater and more current market information than individuals relying on tape reports and quotation systems. Floor members see and hear what is going on and they can react immediately. They know in many instances that a given broker represents certain institutional investors, and may follow his activity closely as he begins to buy or sell large amounts of a stock. They appreciate the trading patterns that generally prevail during acquisition or disposition of large blocks of stock. They are familiar with the trading techniques of different brokers or specialists. They may obtain from fellow brokers or traders general or specific evaluations of investor tenor, in terms of limit or stop orders placed, short sales effected, or orders canceled. These and other factors that are not reflected on the tape contribute to the feel of the market development by floor members.[261]

Besides their advantage in evaluating general market conditions and the market in individual stocks, the "Special Study" pointed out that floor members are in a position to react immediately to developments affecting the markets.

> Unexpected announcements concerning earnings, dividends, mergers, contract awards, litigation, etc., often create sudden activity and price changes. The floor trader is but seconds away from such trading. Other speculators or investors have both a time disadvantage and the handicap of having to designate, an agent to represent them at the post.[262]

The "Special Study" summed up its analysis of floor trading by saying:

> [T]he floor trader is the only member of the exchange who has no special function and undertakes no obligations in relation to the operation of the market as a public institution. In light of the governing statutory scheme of the last 30 years, this fact, in itself, raises a fundamental question of public policy as to the extent to which a public market may be permitted to shelter such private trading activities.[263]

On April 9, 1964, the Commission issued a proposed rule to restrict floor trading.[264] After recitation of the advantages of being on the floor, the release stated that the "short-swing speculations" of floor traders frequently interfere with the orderly execution of public brokerage orders in a normal fashion through the facilities provided for that purpose by delaying consummation of public transactions and causing them to be executed at different prices than they otherwise would.[265] The floor trader, the release continued, can buy stock quicker and at a lower price, or sell it quicker and at a higher price. "This, of course, is done at the expense of some members of the public."[266]

Both in 1945 and in 1963, the Commission decided that exchange rules governing floor trading were ineffective and declared an intention to prohibit such trading.[267] In 1945, the Commission was persuaded to change its position on a prohibition of floor trading when it received assurances that the exchanges could regulate such trading properly.[268] In 1964, the Commission determined to permit the continuation of floor trading only if the New York and American Stock Exchanges were to adopt appropriate regulations prepared by the Commission's staff.[269] The new regulations established stringent capital requirements for floor brokers,[270] segregated the functions of floor broker and floor trader during the same trading session,[271] prohibited the floor trader from having priority, parity, and precedence with orders from off the floor,[272] prohibited congregation and domination in a particular stock[273] and required that 75 percent of a floor trader's transactions be stabilizing.[274] The Commission stated its view that this regulatory program "should preserve the constructive market purposes of floor trading while eliminating its harmful effects."[275]

The other floor member that trades for his own account, the specialist, has similarly had a long history of regulation.[276] The specialist, of course, has even more potential opportunity to take advantage

of his trading position since he not only has sole knowledge of his book, a repository for limited price orders, but also stands at the center of the auction market. It is not necessary to catalog here the regulatory scheme governing specialist trading; suffice it to say that the specialist has drawn more attention from the Commission's exchange regulatory staff over the years than any other category of member.

As we already have noted,[277] of the abuses with which the framers of the Act were most concerned was trading by exchange members from off the floor of the exchange for pools, syndicates, and joint accounts they managed or in which they had a primary interest.[278] The Securities Exchange Act expressly prohibited many of the devices used by the managers of these pools [279] in addition to granting the Commission the authority to prevent "such excessive trading on the exchange but off the floor by members, directly or indirectly, for their own account, as the Commission may deem deterimental to the maintenance of a fair and orderly market." [280] Off-floor trading by members of the NYSE between 1937 and 1961 accounted for 2.9 to 6.1 percent of total round-lot purchases and sales each year.[281] An interesting development, however, which occurred in response to the imposition of floor trading regulation, was revealed by a then private investigation of off-floor trading conducted by the Commission in 1967:

> When the new floor trading rules were adopted, several floor traders found that they could not operate profitably under the rules or they did not want to or could not meet the minimum capital requirement. Whatever the reasons, floor trading in relation to total volume declined sharply on the New York exchanges and trading by members off the floor showed a decided increase. The increase reflected not only the fact that some floor traders gave up their floor activities completely and traded exclusively from off the floor, but also the fact that registered traders combined off-floor transactions with on-floor activities since the latter were sharply restricted." [282]

The primary advantage the off-floor trader has over the public investor, the study found, was the opportunity to effect transactions at no cost or at a reduced cost, which permitted a profit on minor price movements.[283] In addition, however, it was clear that the off-floor trader had many informational and proximity advantages similar to those of the floor trader. He is more quickly aware of developing market trends since he has a direct wire to the floor to keep him posted.[284] Once having made the decision on an investment, the off-floor trader could execute that decision more quickly than the nonmember.[285] That these and other advantages—such as a "feel for the market," constant communications with other members, which can give an idea of the order flow in particular stocks, and knowledge of the way market professionals such as block traders, specialists, and floor brokers operate—do grant a very real preferential trading position is demonstrated by the fact that floor traders simply moved "upstairs" after the floor trading restrictions were adopted, and continued their profitable trading activities.

A recent development since 1963, block trading, also throws new light on the off-floor trading market.[286] Much of the institutional market in stocks traded on the exchange is now "upstairs" in the offices of member firms. A block trade assembler only takes a block to the floor after it has been put together.[287] Meanwhile, rumors fly around the exchange community and when the block trader finally takes his transaction to the floor he may find his activity has drawn a crowd of market professionals.[288]

The Commission has at different times informally requested the New York and American Stock Exchanges to adopt certain rules to regulate, in some measure, the transactions of off-floor traders.[289] A year ago, the Commission transmitted to the Senate Subcommittee on Securities a proposed bill to amend section 11(a) of the Securiites Exchange Act to make clear our authority to promulgate more effective and comprehensive regulation of off-floor trading. In a letter transmitting the proposed legislation, the Chairman of the Commission stated:

> Trading by member firms for their own account on the floors of exchanges has historically presented an important regulatory problem. Because of their proximity to the specialist's post, their knowledge of the trading activity in particular securities (which could be observed before it appeared on the tape) and their ability to trade without payment of a commission, floor traders were able to take advantage of trading opportunities before the public had a chance to respond. This led to the adoption in 1964 by the primary exchanges of rules designed to require that floor traders buy and sell in a stabilizing manner and yield priority and precedence (preferences flowing from being first in time or larger in size) to public orders at the same price.
>
> Today's communications enable members to trade from off the floor with substantially similar advantages. Much of members' trading for their own proprietary accounts now is done from off the floor. Under these circumstances we believe it is presently necessary to take steps to ensure that members' trading, regardless of where it takes place, is properly regulated, so that such trading can make a positive contribution to the marketplace while due protection is accorded public orders. The bill is designed to achieve this result.[290]

It is within the framework of this theme of trading fairness that the Commission views membership on registered national securities exchanges. The feeling of some draftsmen in 1934 was that members should be completely prohibited from engaging in any proprietary transactions on an exchange: "There is no public interest to be served by giving an inside seat to a small group of men who are trading for their own account." [291] Congress declined, however, to prohibit completely the member from trading for his own account and granted the Commission broad power under section 11 of the Exchange Act to regulate such trading. It is clear, nonetheless, that "the only interest the public has in a stock exchange is that it should be a place where the outside public can buy and sell its stocks." [292] This is accomplished by the requirement in Rule 19b-2 that members contribute affirmatively to the public nature of exchanges either by representing public investors in the exchange markets and by servicing their accounts or by participating in a traditional dealer activity designed to contribute to the depth, liquidity and stability of the trading markets thereon.

When acting as a broker, a member is under a duty to represent his customer's interest in the exchange markets and to secure for that customer the best available transaction price. The broker is an agent, and his loyalty to his customer must be undivided. He also may serve the customer by providing bookkeeping records, safe custody of the securities or cash involved, research on the securities of interest to the customer, and assurance that particular transactions are "suitable" for the particular customer. He must also make every effort to prevent his customer from violating exchange rules or the securities laws, to the extent he has reason to believe such may occur. As a result of brokers' efforts to serve the needs of individual investors, confidence in our securities markets is stimulated, redounding to the public good and the economic strength of the country by ensuring the continuing ability of our securities markets to attract capital investment.

If a broker is dependent upon business from public customers, he will have an incentive to perform these public services efficiently and in a manner that will not adversely impact on the markets, since his economic self-interest will be dependent on a consistent public order flow, maintainable only by public confidence that an account will be serviced efficiently and an order treated fairly. To upset the market with any particular order would be self-defeating since he must not discourage other public participaion. On the other hand, if a member is engaged in transactions solely on behalf of an affiliated account his responsibility to and dependence upon that account may conflict with the trading restrictions and regulations of the exchange and with the interests of public investors at large. The mere potential for large investors to ignore the spirit if not the letter of such restrictions may undermine the confidence of other investors in the fairness of the Nation's securities markets.

Specialists, block positioners and floor traders also contribute to the public nature of securities markets by risking their capital to absorb imbalances in supply and demand. These necessary market functions increase the depth, liquidity and orderliness of trading markets, enabling investors to implement trading decisions with relative ease and confidence.

An institution, on the other hand, is a pool of assets, managed by an adviser for the purpose of maximizing the return on investment for those assets. Like a member trading for his own account, an

See footnotes at end of document.

institution may be interested only in trading profits. Accordingly, the position of those who suggest that exchanges should become the province of wealthy investors, or institutions, trading solely for their own account is contrary to legislative intent and all logic.[23] In March of last year we stated:

> If member firms taking too great an advantage of their trading position, let us work to constrict that activity. If the regulations over such trading are not stringent enough, let us tighten those regulations. If the potential for abuse in such trading is too great, let us abolish that trading. But what rationale can exist for allowing that category of trading to expand in a quantum jump by permitting institutions—whose trading activity and capital resources far exceed that of current members—to join exchanges and trade simply for themselves. To the Commission that step would completely reverse the direction we have been moving and would be a significant step backwards to the concept of the "private" club, in direct contradiction to our reading of the Exchange Act which charges us with promoting fair dealing on exchanges, insuring fair and orderly markets and protecting investors. In 1934, Congress was not confronted with the magnitude and tempo of institutional trading which exists today. The principles enunciated at that time are even more pertinent today.[24]

D. *Public Confidence.* In 1961, individuals accounted for 61.3 percent of the total dollar value of nonmember trading volume on the NYSE and institutions accounted for 38.7 percent; by 1971, institutions accounted for 68.2 percent of the value of such trading volume and the value of the market share of individuals declined sharply to 31.8 percent.[25]

The Commission has recognized that the so-called "institutionalization" of the exchange marketplace by virtue of the enormous volume increase of institutional trading is a market phenomenon which is here to stay. Nevertheless, we are also concerned about the impact of such institutionalization on the confidence of small investors and their willingness to contribute to the liquidity of the exchange markets by their direct investment participation. For reasons discussed in the following paragraphs we believe that there may already have been an adverse impact from institutionalization and that individual investor confidence may further deteriorate if institutions are permitted to join the exchanges to trade exclusively for their own private purposes at the expense of individual investors who are placed at a competitive and economic disadvantage and who increasingly recognize that some large institutional investors enjoy special preferential trading advantages.

Odd-lot trading statistics have traditionally been relied upon as a yardstick of the activitity of individual investors in the exchange markets. It is most significant that in recent years, as institutional trading has continued apace, odd-lot investors have shifted from being net buyers to net sellers of NYSE listed securities. For example, in each of the years from 1967 until 1970, odd-lot investors sold over three-quarters of a billion dollars in NYSE-listed securities more than they purchased. In 1971 alone, there was a dramatic increase in net selling by such investors to over 2.6 billion dollars,[26] and during the first eleven months of 1972 the Commission's economists estimate that actual net sales continued to exceed two billion dollars. In addition round-lot volume on the NYSE declined from 5.73 million trades in 1968 to 4.36 million trades in 1971.[27] Observers in the Commission's hearings over the years and elsewhere bear witness to the waning confidence of the individual investor and the need to rekindle that confidence.[28]

One representative of small individual investors has stated to the Commission:

> The questions for the stock market are how narrow will the trading become if it is among institutions and how fair to the investing public will the resulting stock prices be? * * *.
>
> NIRI the National Investor Relations Institute has tried to suggest in its brief, but active history, that the small investor is disenchanted with the market mechanisms as he finds it. * * *.
>
> What we could be witnessing * * * are the first clear unmistakable signs that the financial ecology of the United States is being destroyed. Just as some species of fish and fowl no longer abound, so perhaps we are witnessing the beginning of the end of the small investor. If he goes, the great spawning ground of capitalism goes with him.
>
> If the small investor continues his disenchantment—and his disengagement—then we shall see the system of capital formation, as we have known it, turn into a lopsided monstrosity, unstable in the extreme because the base will be missing; the stabilizing rudder will be gone. * * *.[29]

Similarly, another representative stated:

> We have a very strong feeling that this institutionalization of the securities markets is dangerous to our members as individual investors, to our economy, to our economic freedom and even to the institutions themselves. * * *.
>
> We believe it is very important that the individual investor not have his position weakened further in relation to that of institutions.[30]

In addition, the Commission has received many letters from small investors of all types that confirm a disenchantment with the Nation's securities markets and with the preferential treatment given institutional investors.

If dominance over the affairs of the exchanges is added to the dominance in trading and control of investible funds which institutions have already achieved, the deterioration in confidence of public investors can only be accelerated. In an analogous context it was stated:

> [T]he major banking institutions in this country are emerging as the single most important force in the economy, both through the huge overall financial resources at their command and through the concentration of these resources and other interrelationships with a large part of the non-banking business community in the country. Earlier reports have discussed both the trend toward concentration within commercial banking itself during the post-war period and—even more significantly—the growing interlocking relationships between these major banking institutions and other major financial institutions, such as insurance companies and mutual savings banks. The power of the banks alone is quite impressive. In combination with these other financial institutions it would be overwhelming.
>
> When the power of these financial institutions, in the combination which appears to be evolving, is examined in connection with their power—both existing and potential—over a large part of the non-financial sectors of our economy, the picture is complete. The kind of snowballing economic power described in this study, with its literally thousands of interlocking relationships, is a situation which can only be ignored at great peril.[31]

While we do not base Rule 19b-2 primarily on the potential for economic domination that giant institutions represent, we do believe that, apart from the undesirable effects of economic concentration on the homogeneity of decision-making, such domination has had, and will continue to have, a significant detrimental impact on the attitude of public investors. No one disagrees that the confidence and participation in our securities markets of small investors is vital to the depth and liquidity of those markets and thus to the economic health of the Nation. Since the primary danger of concentration of economic power as it relates to the securities markets is the potential for those wielding great influence to secure a preferential position for themselves, such as through membership for their own private purposes, the Commission believes that Rule 19b-2 will prove to be an essential link in the protections which the securities laws provide for individual investors, revitalizing their confidence that smaller orders will be treated fairly and efficiently in the Nation's exchange markets. The Commission is working on many fronts to bolster the confidence of the individual investor in his right to be treated fairly in the exchange markets.[32] Rule 19b-2 is an integral part of this effort.

This section has been devoted to a showing of the critical need to secure equal treatment for all classes of investors in the exchange markets, to maintain investor confidence in the fairness of those markets and to extend competitively determined commission rates to all orders of institutional size in an equitable manner. For these reasons, we believe Rule 19b-2, requiring that exchange memberships be utilized for public purposes, is essential. Recognizing the variety of ways in which a rule requiring that exchange members conduct a public securities business could be drawn, we have been engaged for nearly a year in attempting to formulate an appropriate test and have sought the advice and suggestions of all interested persons. The analysis of the provisions of Rule 19b-2 contained in the following section demonstrates why we have concluded that the rule we adopt today is best suited at this time to the achievement of the foregoing objectives.

VIII *Analysis of Rule 19b-2.* In this Section we discuss the various provisions of Rule 19b-2 and analyze the comments and suggestions we have received with respect thereto.

A. THE PUBLIC BUSINESS REQUIREMENT

The basic requirement of Rule 19b-2 is contained in its first paragraph: A member of an exchange shall have a public securities business as its principal purpose and shall be deemed to be conducting such a business if at least 80 percent of the value of exchange securities transactions effected by it during the preceding six calendar months, whether as broker or dealer, is effected with unaffiliated persons or is within one of several enumerated categories of principal transactions.

This requirement is designed to recognize and emphasize that exchanges are essential national resources and are affected with an overriding public interest. While we believe membership on an exchange should be open to anyone meeting certain financial responsibility and competence standards, without regard to the nature of the business of its parent or subsidiary, the Commission also believes that those entities seeking or presently holding membership should be prepared to contribute affirmatively to serving the public as evidenced by engaging in the traditional functions associated with executing securities transactions or trading activities which contribute to the liquidity, depth and continuity of the trading markets.

80-20 FORMULA

Many commentators responding to Securities Exchange Act Release No. 9716 (Aug. 3, 1972) questioned the appropriateness of an 80 percent figure in the proposed formulation of Rule 19b-2, suggesting either a lesser figure[403] or a "100-0" test.[404] The House Subcommittee and some members of the Senate Subcommittee which have directed their attention to this provision have also suggested a 100-0 formula.[405] Other commentators supported the 80-20 formulation.[406]

Providing that an exchange member is engaged in a public securities business if 80 percent of the value of its transactions is effected for unaffiliated persons represents an appropriate first step toward achieving the underlying goal of the Rule.[407] As long as trading by an exchange member for its own account, or an account in which it has an interest, is merely incidental to the public service performed, we believe the public nature of exchanges will be preserved. On the other hand, a 100-0 test would be to precipitate a measure at this time. The securities industry has many times proven fragile and highly responsive to structural changes. It is important that we gain some administrative experience in the operation and impact of Rule 19b-2 so that the Commission may reassess its position should harmful, unforeseen consequences arise. The 80-20 formulation will provide us with the necessary flexibility to respond to any fundamental changes wrought by the operation of Rule 19b-2 which are not in the best interests of the investing public. We believe that, as with the introduction of competitive rates, a flexible, administrative approach to the implementation of a public business requirement is a prudent, responsible means to implement desirable change without undue disruption of the capital raising mechanism of our economic system.[408] Commentators favoring a "100-0" test, argued mostly for a position of alleged logical purity: If a conflict of interest exists for certain types of accounts, not even 20 percent of the value of a member's exchange transactions should be permitted for affiliated persons; if rebative mechanisms are wrong, not even 20 percent of a member's transactions should be permitted for affiliated persons. Others argued that anything less than a 100-0 test would create administrative, bookkeeping and surveillance problems.[409] While we do not dismiss these criticisms lightly, they appear to be misplaced. The 80-20 formula is a long overdue first step. It would make no sense for the administrative agency charged with oversight of the securities industry to give up the one great virtue which makes it the uniquely appropriate governmental body to implement structural change: The ability to proceed gradually, to monitor impact continuously and to respond immediately to undesirable consequences. Assuming arguendo that the conceptual problems expressed by the commentators are real, those problems would be a small price to pay for much needed flexibility.

Many commentators made suggestions as to the appropriate scope of application of the percentage formula. Some comments were specifically addressed to policy question number 1 in Release No. 9716 which asked whether the test should be applied to security commission income as well as the volume of exchange securities transactions.[410] Other commentators suggested that the test be applied to all of the securities transactions of a member firm, whether on or off the exchange, and that it should be applied separately to bond and equity transactions. In addition, a question of interpretation was raised: Where a member belongs to more than one exchange, should the test be applied separately to the business done by the member on each exchange or should it be applied on a composite basis to all the transactions done by the member on any of the exchanges of which it is a member?

SECURITY COMMISSION INCOME TEST

Without a security commission income test, some contended, specialist firms would become likely takeover candidates for institutions since market making transactions could be used to "distort" the base for computing permissible agency transactions.[411] In addition, the test should apply to security commission income, it was argued, because it is income which motivates a broker's business decisions.[412] Finally, one commentator believed a commission income test alone would be appropriate since brokers presently maintain their records on a commission income basis, not a dollar volume basis.[413]

It is far from clear that a specialist firm, with a high degree of market risk involved in its activities, is a much more attractive takeover candidate than any other type of broker-dealer. Nevertheless, even if this were so, market makers such as specialists do conduct a public securities business, and the ability of a specialist firm (and other members) to attract permanent capital in the form of investment by an institution is one of the policy considerations underlying the removal of the parent test. It would be anomolous for retail firms to be able to attract permanent capital in the form of an institutional investment while specialist firms, where the addition of working capital is equally in the public interest, would be less attractive to the same potential investors.

More importantly, perhaps, the value of exchange transactions should be a relatively constant measure of exchange executions as among different brokerage firms, whereas commission levels may vary even under fixed minimum rates with the nature of the function performed by the firm and will vary greatly in transactions involving competitive rates.[412a] With competitive rates becoming more of a factor, a commission income test would not apply consistently since a firm could negotiate a very low or zero "overage" commission charge on transactions with affiliated parties, thus permitting more than 20 percent of a member's business with affiliated parties.[412a]

The recordkeeping problem referred to by one commentator could be overcome only if a commission income test alone were used, but the contention that a value of transactions test would present difficult practical problems was disputed.[414]

In short, the Commission is not persuaded that addition of a security commission income test would add substantially to the effectiveness of Rule 19b-2.

TRANACTIONS TO BE INCLUDED

One commentator urged that the 80-20 ratio be applied to all securities transactions, wherever executed by the member, except underwritings and transactions in municipal securities, U.S. Government securities and commercial paper.[415] Without such a requirement, this reasoning held, Rule 19b-2 would permit a member organization to avoid the 20 percent limitation by placing orders for affiliated persons in the 3rd market and would also permit affiliated brokers to execute all the over-the-counter transactions of their affiliated persons, whereas all the reasons which support a public business requirement for exchange business must necessarily support this requirement for nonexchange business.

This suggestion, in our view, failed to focus on the purpose of the public business test—the public nature of exchange markets and the proper use of stock exchange memberships. More importantly, perhaps, an institution generally trades directly with market makers, block positioners and block traders in the 3rd market, not through an affiliate. In terms of

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the effectiveness of Rule 19b-2, therefore, it would appear that this requirement would be meaningless since an institution desiring to avoid the effect of Rule 19b-2 will trade in the 3rd market, but not through its affiliated exchange member.[416]

As to transactions in over-the-counter securities, as well, an institution typically will go directly to the market maker without using a broker. The only thing accomplished, it would appear by including over-the-counter transactions in the test would be to permit a member to build up the public portion of its business through over-the-counter market-making and brokerage. We are not persuaded, therefore, to expand the scope of the 80-20 rest to apply to over-the-counter transactions.

TYPE OF SECURITIES TO BE INCLUDED

Some commentators suggested that the 80-20 test be applied separately to transactions in equity securities and transactions in debt securities.[417] If the 80-20 test were applied to all securities transactions in all markets, a separate test measuring bond and equity transactions might be important, since a member could establish an over-the-counter bond market making and brokerage operation and inflate the value of its public business (bonds typically are traded in higher value lots than equity securities). The necessity for this restriction, however, is not great if the test is applied only to exchange markets as Rule 19b-2 presently contemplates since even listed bonds are generally traded off-board. Although we are not inclined to adopt a separate test at this time, if the bond market should return to the exchanges, perhaps because of the 80-20 test, a separate test would then be considered.

SEPARATE TEST FOR EACH EXCHANGE

One commentator believed the 80-20 test should be applied twice if the organization is a member of more than one exchange—once to the member's transactions on each particular exchange and again to the combined transactions on all exchanges of which it is a member.[418] Another commentator believed the rule simply should be applied on an overall, combined basis to avoid impinging on a broker's duty of best execution by providing artificial incentives to execute an order on a particular exchange.[419]

We are persuaded that at least at the outset the Rule 19b-2 test should be applied on a combined basis to all transactions on all exchanges of which a particular organization is a member. This single test will substantially accomplish the purpose of Rule 19b-2 while not adversely affecting performance of the duty of best execution.

PRIMARY PURPOSE REQUIREMENT

Some commentators have suggested that the rule should also contain a primary purpose requirement to insure that a member firm is primarily engaged in the securities business.[420] The regulation of a member's net capital in particular, it was urged, would be exceedingly difficult if a member firm were primarily engaged in an unrelated industry, since an evaluation of the real and contingent liabilities of the unrelated business and the liquidity of assets would be almost impossible. Additionally, insofar as exchange regulation is exercised through control of partners, officers, and directors of the member, these persons must be experienced in, and devote a majority of their time to, the securities business. For enterprises primarily engaged in other activities, this regulation would not be feasible.

We believe that if an exchange finds that a primary purpose test applied to the business activities of its member organization would aid that exchange in discharging its self-regulatory functions under the Securities Exchange Act such a requirement would be appropriate. Since any primary purpose requirement would be applied to the activities of the member organization only, the addition of such a rule would not have any anticompetitive effect. An organization engaged in unrelated businesses would simply have to establish a separate corporate entity for its exchange affiliate; conversely, an exchange member desiring to diversify into unrelated activities could establish a separate corporate entity to do so.

ENUMERATED PRINCIPAL TRANSACTIONS

Apart from brokerage transactions for unaffiliated customers of a member firm, Rule 19b-2 as proposed, contemplated certain categories of principal transactions which contribute to the effective functioning of exchange markets. Primarily these categories are comprised of market making transactions and other transactions which contribute to depth, liquidity, stability, and continuity. Public comments on this aspect of Rule 19b-2 were limited.

In determining eligibility for exchange membership, one commentator asserted, the Commission should distinguish between "wholesale" services to the market itself, such as specializing or trading in odd lots, and "retail" services to customers of that marketplace.[421] Any otherwise qualified firm should be admitted to membership to perform these wholesale floor functions, it was urged, and such wholesale business should not be counted in applying the 80-20 test since it is the retail function which is significant in determining whether a firm is doing a predominantly public business. If the wholesale function is not excluded from the Rule 19b-2 test, this reasoning concluded, that function could well become dominated by institutions; a prospective member seeking public business to offset that of its affiliate would acquire a specialist rather than incur the higher cost of acquiring a "wirehouse."

The exclusion of such principal transactions from the application of Rule 19b-2, however, would produce anomalous results best demonstrated by an example: A block trader would be considered to be contributing to the public nature of securities markets on the portion of a block crossed, but not on the portion positioned, where substantial market risk was undertaken. Furthermore, preventing an institution from affiliating with a market maker firm is not supported, in our view, by reference to a regulatory purpose. Indeed, as pointed out above, specialist firms have as much need for a permanent capital base as retail brokerage organizations.

One commentator questioned the inclusion of arbitrage transactions in the enumerated list of principal transactions which should be considered as contributing to the public portion of a member's business, since arbitrage may be a completely risk free market activity performed exclusively for the private interests of the arbitrageur.[422] In our view, the important consideration in determining what principal transactions should be included in the enumerated categories is whether those transactions perform a useful or beneficial market function. We have traditionally considered arbitrage as performing a worthwhile economic role since it serves to equalize the price of a particular security or its equivalent when traded in different marketplaces. Although a willingness to incur substantial risk may evidence a member's commitment to a particular market function, such as specializing or block positioning, the fact that another market function may be performed without risk should not mandate its disqualification.[423] Likewise, the Commission is fully aware that exchange members are engaged in an enterprise for profit. If all transactions which generate a profit were not considered a public business no organization would wish to qualify for membership.

Another commentator[424] suggested that a new category of principal transactions be added:

> ( ) any transactions effected on another national securities exchange which, under the rules of such other exchange, is counted towards satisfaction of a public securities business requirement imposed by the rules of such other exchange, whether or not such transactions would otherwise be counted toward satisfaction of the public securities business requirement of this rule.

Since the Commission intends to play an active role in overseeing and monitoring the application of the provisions of Rule 19b-2 to eliminate disparity in the interpretation of the public business requirement, it does not appear necessary at this time to add the suggested category.

Still another commentator proposed that the list of enumerated principal transactions be expanded to include over-the-counter market making transactions and riskless principal transactions pursuant to the customer's order.[425] These suggested additions, however, would only be necessary were the rule to be applied to all securities transactions of the member. Since the rule presently does not apply to over-the-counter activities of a member, the adoption of these suggestions are unnecessary.

B. AFFILIATED PERSONS

The initial premise of the reasoning behind Rule 19b-2—that a member organization must be principally engaged in a public securities business—requires a qualitative judgment about certain kinds of exchange trading activities. That judgment is most easily made when addressed to unregulated trading by a member organization for its own account, clearly a private activity, or to the traditional brokerage function wherein a firm engages in agency or principal transactions at an arm's length basis with the public at large, clearly a public business. But the line is not always so easily drawn. Accordingly, it becomes necessary to determine when a member has such an identity of interest with a particular account that, for the purposes of Rule 19b-2, trading for such an account may be considered the equivalent of a member trading for its own account. In seeking to describe such transactions, Rule 19b-2 embraces the concept of "affiliated persons."

Certain types of accounts may be deemed affiliated accounts per se. For example, in the 1940 Investment Company Act Congress recognized that the relationship between an investment company manager and its shareholders was such that shareholders were easy prey to unscrupulous "fiduciaries." [426] As a first step, therefore, the Act had to define those persons having the ability to influence the affairs of the fund. Rule 19b-2 is consistent with this congressional expression of intent in the Investment Company Act, by also considering managers and their investment companies as affiliated persons.[427]

In addition, certain "natural persons," such as a principal officer, may have such a close relationship with the member that it would be illogical to consider transactions executed for their account public business; thus, they also are deemed affiliated persons.[428]

Apart from the expressly named kinds of affiliated persons in Rule 19b-2, it is evident that other relationships, such as ownership or the ability to direct the policies and management of an organization, however derived, should be considered to create an affiliation for purposes of the rule. Hence Rule 19b-2 defines an affiliated person generally as any person directly or indirectly controlling, controlled by or under common control with such member, whether by contractual arrangement or otherwise.[429] A presumption of control is created for those persons having the right to participate in more than 25 percent in the profits of such other person or who own more than 25 percent of the outstanding voting securities of such person.[430] It is expressly provided, however, that the right to exercise investment discretion with respect to an account, without more, shall not constitute control.

THE RELEVANCE OF CONTROL

Much of the criticism directed at proposed Rule 19b-2 was addressed to its utilization of the concept of control.[431] Some commentators thought the legal definition of control to be irelevant to the task at hand.[432] Other commentators criticized the use of the term control stating that its use would result in a discrimination in favor of certain existing member firms by granting those members a perpetual competitive advantage in one aspect of the investment management business.[433] This would be accomplished, presumably, by defining control in such a way as to treat certain substantially similar types of accounts as public business for some members but private business for others.

Some commentators believed that the Commission should abandon the use of the term "control" in Rule 19b-2 and define an affiliated person either by reference to specific classes of managed accounts or by using the right to exercise investment discretion as determinative of affiliation.[434]

The first approach appears to the Commission to be both unnecessarily sweeping and to miss the point of the rule. Rule 19b-2 is intended to insure that exchange markets will be used primarily to serve the investing public. Business which is obtained and held through competitive merit is public securities business, regardless of the nature of the customer, whereas business received because of an identity of interest between the broker and his "customer" is not. In view of this fundamental premise, it makes little sense to abandon this concept and arbitrarily classify an account as public or nonpublic based merely on the type of institutional customer involved. Applying the rule analytically to each arrangement by utilizing the concept of control may require greater effort but will result in more accuracy in sorting out the relationships properly classified as affiliated. Moreover, the flexibility of a term such as control will permit the rule to be responsive to new, as yet untried, forms of investment arrangements between brokers and their customers.

The second suggestion, that investment discretion is the only relevant element in the concept of control, ignores the traditional legal interpretation of that term.[435] Under customary contractual arrangements, an adviser with mere discretionary authority over an account, whether that adviser is a broker, an insurance company, or a bank, is subject to discharge by whoever is ultimately in control of the account. As long as the investment adviser must compete with all other investment advisers for the account, and has no authority in the selection or retention of an investment adviser, that account should not be considered a captive or "controlled" advisory account.

Although there is some merit to the view that investment discretion should be the operative test,[436] on balance, a test which utilizes the concept of control will be the most workable. A management contract may be written in such a way as to establish a ritual whereby the trustee or beneficiary specifically ratifies each investment decision, nevertheless enabling the manager to maintain de facto discretion. Moreover, in the dynamically changing securities and investment advisory industries, rules which are specifically applicable to current methods of doing business quickly become obsolete. The public business requirement is one cornerstone in the Commission's concept of the future structure of the nation's securities markets. As such it must employ concepts with the flexibility to stand the test of time.

One Commentator believed that the presumption created in the rule for a finding of control where a person owns more than 25 percent [437] of the voting securities of a member or possesses the right to participate in more than 25 percent of its profits would be too inflexible, pointing out circumstances where an entity had been found by a particular exchange to be the parent of a member corporation even though that entity did not own any of the voting securities issued by the member corporation.[438] Other commentators said that Rule 19b-2 should focus on the importance of the customer to the member.[439] The Commission is certainly aware that at times situations arise wherein a particular entity has effective control over the affairs of a member organization without having ownership of voting securities or even a right to participate in profits of the member.[440] The control presumption is certainly not exclusive. The existence of control was intended, and still is intended, to be found after consideration of all the facts involved in a particular relationship. The Commission believes that the flexibility inherent in the use of the term control provides sufficient latitude to permit effective and substantive administration of the rule.

THE COMPETITIVE EQUATION

It was urged by some commentators that permitting certain institutional accounts under discretionary management to be considered noncontrolled would grant existing exchange members a competitive advantage over nonmember investment managers for the fastest growing area of money management, pension fund management.[441] The broker-manager, this argument held, would be able to offer the pension fund trustee or employer company a reduced fee which contemplated commission income generated by portfolio transactions for the pension fund through the broker-manager. Since the nonmember does not receive this brokerage income, the argument runs, the member will be able to underprice nonmember investment advisers and unfairly capture a healthy percentage of this investment management business.

The commentators most concerned with competitive equality for the management of pension funds were insurance companies.[442] Although pension fund services offered by insurance companies have almost as many variations as there are insurance companies, basically the plans utilize one of two concepts—money

See footnotes at end of document.

management through separate accounts or insured pension plans.

Under Rule 19b-2, any money manager, whether or not the subsidiary of a financial institution such as an insurance company managing separate accounts, will be able to join an exchange, if not already a member, and offer the same price advantage to the pension account as that offered by an existing member firm. Rule 19b-2 eliminates, not resurrects, the "parent test" discrimination among exchange members. Where the insurance company, or its subsidiary, is simply managing and investing pension fund assets without any other indicia of control, as is typically the case with a separate account, we would consider transactions executed on an exchange for the account by the insurer's affiliated member to be public business. Accordingly, it is difficult to see how the insurance company is placed at a competitive disadvantage in marketing its money management services, so long as it is prepared to join an exchange.[42]

On the other hand, where an insurance company is offering an insured pension plan to an employer company, a different result would obtain. Insured pension plans are much like group annuity insurance contracts: The insurance company is selling insurance, not money management. The insured pension plan is funded by the assets of the insurance company, and it, not the pension plan, bears the risk of market depreciation and reaps the reward of appreciation. The insurance company has beneficial and legal title to the assets funding the plan, and when it invests these assets it is trading for its own account, to benefit the insurer as a corporate entity.

Given this analysis, it is difficult to see what competitive disadvantage the insurance company would be under. Any employer desiring the guarantee of insurance, has only one place to go: The insurance industry.[44] Indeed, under Rule 19b-2 the insurance company would be able to offer not only the insured pension plan but also separate account money management with all the price advantages which accrue to combining money management and brokerage, if it seeks exchange membership.

Like the insurance companies, banks also have more competitive tools at their disposal than broker-managers. It is at best questionable whether the Glass-Steagall Act[45] or the Bank Holding Company Act[46] would prevent a bank from establishing a subsidiary to manage money and perform brokerage on an exchange in order to compete with the brokerage industry for pension asset management on a pricing basis. In addition, the bank may offer a variety of additional services, for example, as custodian, transfer agent, lender or trustee. In some circumstances, depending on the nature of the trust agreement or other relationships the bank may have with the account, it may be in a legal control relationship with that account (and might even be prohibited by local fiduciary law from performing brokerage for the account). In other situations the account might be treated as nonaffiliated. Even where this is not the case, however, the control relationship will have arisen because the bank has determined that as a competitive matter its management services would be most attractive in combination with certain other services. That is a bank's choice. In any event it should be noted that banks have traditionally been able to offer a wide range of services and compete effectively in offering low management fees by spreading costs over a variety of functions, even without a brokerage subsidiary.[47]

In sum, both a bank and an insurance company under Rule 19b-2 will be able to offer several options to the employer company or trustee of the pension plan, including reduced advisory fees made possible by commissions earned for execution services on an exchange, as well as by spreading the cost of money management over basic banking and insurance services. The broker can offer these accounts money management in combination with execution services. The ultimate beneficiary of this flexibility in combining various kinds of financial services is the consumer. We are not persuaded, therefore, that either of these respective classes of institutions would be competitively disadvantaged by the use in Rule 19b-2 of the concept of "control."

OFFICERS, DIRECTORS, AND PARTNERS

Rule 19b-2, as proposed in Release No. 9716, differed slightly from the form in which it appeared in a letter from Chairman William J. Casey to the presidents of the registered national securities exchanges (May 26, 1972) in its treatment of officers, directors, and partners. While the original rule specifically deemed all such persons to be "affiliated" the revision abandoned the per se approach; "affiliation" was to be determined by the actual presence or absence of "control." The Commission invited comments on this revision of the original rule.[48]

Many of the comments opposed the automatic inclusion of such persons in the "affiliated" category and advocated a reliance on a finding of actual control as the test of affiliation.[49]

One commentator supported the control test for these persons because of the regulatory and operational problems that otherwise would be created.[50] For example, as a practical matter, in certain firms hundreds of individuals could conceivably be considered officers, depending on one's definition. Considering the trading of such persons as nonpublic business would unfairly penalize some member organizations, this view held, by inflating their affiliated business.

In addition, it was urged that to consider the business of such persons as "affiliated," absent a control relationship, would presumably encourage such persons to trade outside their own firms so as to avoid any adverse impact on the computation of the 80-20 test.[51] This result, the argument continued, would create surveillance and compliance problems for member firms and would undermine the self-regulatory responsibility of the member. For these reasons, some commentators believed that all officers, directors, and partners should be specifically excluded from the definition of affiliated person, regardless of the presence or absence of control, so that such persons would have no disincentives to trade through their own firm.

Several commentators suggested that business for such persons should be "neutralized," i.e., included in neither the public nor nonpublic portion of a firm's business.[52] Another commentator proposed that only if the volume of transactions for such persons exceeded the point where it would no longer be considered incidental to the member firm's public brokerage business, say 5 percent of total volume, should it be considered affiliated business.[53]

Other commentators were critical of the proposed revision of this clause, preferring the per se inclusion of such persons.[54] The distinction between officers and directors in control, one commentator urged, and other officers and directors is meaningless in terms of the rationale for Rule 19b-2.[55] In both instances the trading is for an equally private purpose and the temptation to favor the officer or director is equaly compelling.

Although we have some sympathy with the view that for regulatory purposes a member should be trading, if he trades at all, through his own firm, present exchange regulations does not require such a result.[56] Moreover, the basic premise of Rule 19b-2 is that a member organization must be engaged principally in a public securities business and not engaged principally in the business of executing transactions for officers of the firm. Nonetheless, we believe a distinction must be made between principal officers, partners and stockholders and mere employees of the firm. It is those persons with the power of control over the affairs and operation of a member whose securities transactions should not be deemed "public." Accordingly, Rule 19b-2 has been revised specifically to include in the definition of an "affiliated person" a principal officer, stockholder or partner of a member organization.[57] A principal officer is defined further to mean the president, executive vice president, treasurer, secretary, or any other person performing a similar function for an incorporated or unincorporated organization. A principal stockholder or partner is any natural person actively engaged in the business of the member and beneficially owning directly or indirectly more than 5 percent of the outstanding voting securities of a member organization or having the right to participation to the extent of more than 5 percent in the profits of such person. Other accounts in which such persons have a direct or material indirect beneficial interests are also included.[58]

TRANSACTIONS FOR FOREIGN AFFILIATES

A special problem arises in the application of proposed Rule 19b-2 to the securities business conducted by foreign-controlled members of U.S. exchanges. This problem relates to the proper treatment under the 80-20 test of orders which a foreign parent places with its U.S. subsidiary. Some orders placed by the foreign parent may be for its own account or the account of an affiliated person (e.g., a managed mutual fund), while others may be for the account of unaffiliated public customers of the parent.[460] The question which the Commission has addressed is whether such orders of the foreign parent should be deemed categorically to be "affiliated" business merely because they are invariably carried, for purposes of convenience of confidentiality, in the parent's name, or whether it is appropriate to permit or require the exchanges, in administering the 80-20 test, to examine the origin and nature of such orders to determine whether they should be classified as unaffiliated (public) or affiliated (nonpublic) business.[460]

One commentator expressed the view that because of the foreign parent-member firm relationship all orders in the name of the parent are not effected "for or with persons other than affiliated persons".[461] The anomaly of this approach is best illustrated by observing the opposite case—a domestic member firm with a foreign brokerage subsidiary (which might be a bank or an ordinary broker). A literal application of Rule 19b-2 would treat all orders in the subsidiary's name as affiliated orders, even though they are public orders generated abroad for completely unaffiliated customers.

Regardless of how this issue is resolved, two additional questions remain: Whether foreign broker-dealers or institutions should be able to obtain membership through subsidiaries on U.S. exchange markets for execution of these public agency orders and, if such membership is permitted, whether exchanges will be able to assure themselves that orders executed by a U.S. subsidiary of a foreign entity designated as public securities business are in fact orders for unaffiliated customers of the foreign entity.

At the present time all exchanges have members affiliated with foreign entities, although some exchanges have rules generally designed to discourage these relationships.[462] The Commission is not now prepared to mandate that all exchanges must permit such members or that all exchanges must not. This issue needs more study and analysis. Indeed, experience with the operation and administration of Rule 19b-2 with regard to those exchanges currently having such members may shed some valuable light on the advisability or feasibility of either approach.

Presently, therefore, the Commission is inclined to interpret Rule 19b-2 to classify business placed by a foreign parent for its own account or for the account of affiliated persons as nonpublic business but to permit classification of business for unaffiliated customers of the foreign parent as public business: *Provided, however,* That an exchange will be able to satisfy itself and the Commission that such classification is accurate.

A suggestion made by one commentator to accomplish this verification would be for the exchange involved to rely on a certification of the member and its parent as to the nature of the particular business involved.[463] The Commission does not believe, despite the integrity of the foreign entities involved, that a self-serving document such as that suggested should replace the self-regulatory responsibility of an exchange to enforce Rule 19b-2. Another possibility would be a limited waiver of any applicable secrecy laws or other confidential relationship for the purpose of permitting limited audits or inspections of the parent's underlying records by representatives of the exchange in question or, possibly, a responsible, disinterested third party such as a public accounting firm or a regulatory body of the foreign parent's domicile.

These approaches and others should be considered by the exchanges and Commission to determine whether any verification program would prove adequate. It must be emphasized that an exchange desiring to permit a member to execute brokerage transactions for a foreign affiliate must bear the burden of satisfying the Commission that all foreign-related inspection programs are realistically designed and are being actively enforced.

C. MECHANICS

UNIFORMITY

Policy Question No. 2 in Securities Exchange Act Release No. 9716 solicited views on the extent to which each exchange should be required to adopt an identical rule.[464] Comments on the rule ranged from suggestions that the rule should be strictly uniform to suggestions that the rule should permit maximum variation.

The Commission believes that each exchange should adopt a rule identical to Rule 19b-2 with technical variations permitted only to make the language of the rule not inconsistent with the language of existing exchange rules. The Commission staff will consider each exchange variation or any proposed additions to the basic language of the rule during the course of its review under Securities Exchange Act Rule 17a-8 and will determine whether such changes or additions comply with the fundamental purpose of Rule 19b-2.

The Commission recognizes that some aspects of Rule 19b-2, as adopted by the exchanges, will require interpretation, most notably application of the term "affiliated person." Rule 19b-2 not only requires exchanges to adopt a particular rule but also that they enforce its terms.[465] In order to insure that such enforcement is carried out vigorously and uniformly, a new subsection (d) has been added to the rule, specifying that it is a violation of Rule 19b-2 for an exchange to fail to enforce its rules or to fail to require compliance by its members with any phase-in plan they may file with the exchange.[466] Thus, we expect the exchanges to discuss in advance all significant interpretations of the rule with our staff to insure a basic uniformity of interpretation among the various exchanges.

PHASE-IN

A number of exchanges presently have members not engaged in a public securities business. Clearly, Rule 19b-2 must apply evenhandedly to all exchange members, regardless of when they joined a particular exchange. Accordingly, Policy Question No. 6 requested views on the appropriate phase-in period for members not currently so engaged.[467] The comments on suggested phase-in approaches reflect every conceivable approach and no consensus. While the Commission is inclined to seek a prompt resolution of the issues discussed herein, it also realizes that some entities have sought membership on an exchange in good faith reliance on existing law or policy. We believe it is appropriate to grant current members not in compliance with the rule 3 years in which to order their affairs appropriately. A subsection which so provides therefore has been added to Rule 19b-2.[468]

As we have shown in this section, Rule 19b-2 as adopted is designed as a workable, flexible regulatory tool intended to encourage competition in providing service to the investing public and to insure that the Nation's securities exchanges are utilized for public purposes, consistent with the intent of Congress.

IX. *Competitive Considerations.* Throughout our consideration of those issues which concern the structure of the securities markets, the Commission has considered carefully the competitive ramifications of the various alternatives presented.[469] As we noted in 1941, "Congress has given expression to the policy of fostering competition among exchanges and of keeping such competition fair." [470] Even in a highly regulated industry such as the securities industry, competition is important to maintain the integrity of the industry and the quality of service and products offered to the investing public. We remain committed to this principle.

Nevertheless, the fact that an industry is regulated, or even self-regulated to some extent, also reflects a congressional determination that competition is not always the sole satisfactory answer to complex problems.[471] Sometimes, those who urge greater "competition" simply may mean less regulation and greater industry freedom to pursue any course of business conduct, whether or not it may otherwise be compatible with the public interest. As we already have seen,[472] the purpose underlying the enactment of the Securities Exchange Act was to vest in

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this agency broad authority to regulate an otherwise unrestrained industry.

Competition and regulation are not, however, inconsistent or mutually exclusive goals; to view the matter otherwise would be to suggest that competition is merely a synonym for a "laissez faire" attitude, and we are well aware that that approach has long ago been rejected. But the Securities Exchange Act, with its scheme of governmental regulation as well as self-regulation, necessarily contemplates that certain curbs on competition may, depending on the circumstances, be either necessary or desirable for the protection of investors.[472]

We concur, therefore, in the suggestions of a number of commentators[474] that the Commission should carefully weigh the impact of its determinations on industry competition in determining whether Rule 19b-2 should be adopted, and we have done so. We note generally, however, that the need to consider competitive factors and the weight such factors are to be given will vary, depending on the subject matter under scrutiny by the Commission.[475]

But our review of regulatory proposals, especially our own, must be made in accordance with the aims, philosophy, provisions, spirit, and legislative history of the Securities Exchange Act. Any action we take must be necessary or appropriate[476] to meet the standards of that Act and no other. While we discuss applicable antitrust decisions of various courts below,[477] we think it important to note at the outset that the public interest is guarded through the Commission's ability and responsibility to weigh proposals for regulatory action against the Congressional mandate reflected in the Securities Exchange Act. While we find that due consideration should be given here by the Commission to anticompetitive considerations, there is no occasion before either the Commission or any other forum for direct application of the antitrust laws.[478] In "Silver v. New York Stock Exchange,"[479] where the Court only discussed self-regulatory actions taken by exchanges, not Commission action taken pursuant to its authority under the Securities Exchange Act, the Court seemingly spoke to this issue:

> The absence of Commission jurisdiction, besides defining the limits of the inquiry, contributes to its solution * * *. By providing no agency check on exchange behavior in particular cases, Congress left the regulatory scheme subject to the influences of * * * (improper collective action) over which the Commission has no authority but which if proven to exist can only hinder the Commission in the tasks with which it is confronted * * *. Should review of exchange self-regulation be provided through a vehicle other than the antitrust laws, a different case as to antitrust exemption would be presented.[480]

Our analysis, in this regard, recently was confirmed in "Robert W. Stark, Inc. v. New York Stock Exchange, Inc.",[481] where the court noted:

> This Court concludes that there is adequate power in the SEC to take all steps necessary with respect to the access of institutional investors to the NYSE and further believes that this Court should take no step in private litigation which might in any way prejudice the effectiveness of such a scheme, or create any grandfather rights for plaintiffs, or otherwise impair by implication or otherwise, the full and complete right and power of the SEC to do the regulatory work for which it was constituted, in an area of market action which cries out for some rational plan.
>
> If and when, after full administrative procedures the SEC does impose such a rule, it will be subject to judicial review at the instance of any exchange or any member thereof, as an agency action, under the Administrative Procedures Act, 5 U.S.C. sections 702 and 704, and possibly also, to the extent of claims of ultra vires, or that constitutional rights have been violated by an action for declaratory judgment.[482]

In order to weigh competitive impacts of proposed regulatory action, it has been suggested by the Antitrust Division of the Department of Justice that the first inquiry should be:

> Whether the practice is illegal under traditional antitrust concepts—i.e., does it have the requisite anticompetitive effect? If not, that is the end of the inquiry.[483]

We have reviewed our proposed regulatory action and do not find that its impact is or will be anticompetitive. It is significant to consider who shall be required to compete and for whose benefit competition is required. Under a regulatory statute, competition can be found to be in the public interest only so long as the public, and not some special interest groups, are the ultimate beneficiaries. On balance, we believe the impact of Rule 19b-2 will be to foster meaningful, as opposed to artificial, competition, to the benefit of all public investors.

First, the Commission's rule requires the abolition of barriers no longer meaningful to exchange membership, such as the so-called parent test.[484] The fact that a would-be exchange member may be affiliated with or a subsidiary of a financial institution or other entity not primarily engaged in the securities business will no longer serve to defeat attempts to obtain exchange membership. Second, under the rule, the only requirement for exchange membership, other than requisite financial capacity and competence to perform traditional brokerage functions,[485] will be a demonstrated commitment on the part of all exchange members to compete for the public's securities business. We do not perceive any way in which such a requirement, which fosters competition for exchange brokerage dollars, is in any way repugnant to traditional antitrust concepts, and none has been demonstrated.[486]

Traditionally, and by statute, anticompetitive activities are those which reflect a combination or conspiracy designed to deny access to important business advantages.[487] Here, not only are the essential elements of such a conspiracy or combination absent,[488] but the Supreme Court has stated that:

> * * * where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the (Sherman Antitrust) Act can be made out.[489]

We know of no precept of law or policy, enunciated congressionally or judicially, that requires us, in structuring the securities industry for the future, to grant competitive advantages to one class of investors at the expense of another solely because of financial position. Indeed, there exists a risk of monopolistic consequences if large economic interests are permitted an advantage over small competitors solely because of their size.[490] The basic rule fashioned under the aegis of the antitrust courts is that those who control an essential resource must grant access to it on equal and nondiscriminatory terms to all those in the trade.[491]

Here, we have taken constructive steps to open access to exchange membership to all persons on an equal basis, a basis that is consonant with the legislatively mandated purposes of exchanges[492] and that fosters or increases competition in an industry where meaningful competition has taken on added significance. Access to exchange membership, after the effective date of Securities Exchange Act Rule 19b-2, will be available on equal terms to all persons; and existing exchange members engaging in money management endeavors will stand in no different stead than other money managers which seek to become exchange members. As one of the draftsmen of the bill that led to the adoption of the Securities Exchange Act testified:

> The only interest the public has in a stock exchange is that it should be a place where the outside public can buy and sell its stocks. There is no public interest to be served by giving an inside seat to a small group of men who are trading for their own account * * *. [T]here is no reason why men interested in trading for their own account should not trade on the outside through a broker, and pay a commission. You and I pay a commission for it.[493]

Finally, the Commission's efforts today must be viewed in their proper context—the goal of the establishment of a viable central market system for listed securities designed to promote and operate on the basis of fair competition.

In our "Policy Statement",[494] we called for the development of a central market system for listed securities predicated upon competitive considerations,[495] and defined such a system in the following manner:

> The term "central market system" refers to a system of communications by which the various elements of the marketplace, be they exchanges or over-the-counter markets, are tied together. It also includes a set of rules governing the relationships which will prevail among market participants. To mandate the formation of a central market system is not to choose between an auction market and a dealer market. Both have an essential function and both must be put to work together and not separately in the new system.[496]

Securities Exchange Act Rule 19b-2 will assist us in remedying the problems that today are prevalent in the securities

industry which impede the development of such a central market system.

In our Institutional Investor Study,[497] we found, among other things that financial institutions tend to concentrate their portfolios of equity securities in common stocks issued by companies listed on the New York Stock Exchange,[498] and that the ability of regional exchanges to compete with the so-called "primary exchanges" was not predicated upon true competitive considerations—for example, attractive regional offerings, stock price competition in dually traded securities or service competition. Rather, competition was, to a large extent, based upon the combination of (1) the maintenance by all exchanges of fixed minimum commission rates; (2) the lack of volume discounts; and (3) the offer by the regional exchanges of an "easy" way to evade an artificial minimum commission rate—the purchase of an exchange "seat," entitling the holder to save or redirect commissions in ways not otherwise available,[499] benefits apparently not passed on at that time in any meaningful degree to any beneficiaries of the institutions.[500]

Competition predicated upon artificial barriers to free access in the exchange markets such as we have discussed not only is illusory, but, in our view, is harmful to all public investors. We have seen that large institutions tend to prefer those securities listed on the New York Stock Exchange; the central market system will insure that the regional exchanges have a real opportunity to develop competitive markets for these securities. But that competition should not be engendered by devices that deprecate the integrity of the markets generally. In our view, competition should be predicated upon factors such as securities price, research, execution, and other services. There does not appear to us to be any regulatory justification for maintaining fixed minimum commission rates on large orders while at the same time competing in permitting large investors to circumvent these rates by becoming members of exchanges. Rule 19b–2 insures that real competition between exchanges[501] will be fostered on a meaningful basis—and will redound to the benefit of all investors, large or small. We therefore cannot concur in the suggestion, posited by some commentators,[502] that Rule 19b–2 will have anticompetitive impacts.[503]

While we are persuaded that Rule 19b–2 will foster competition in the securities industry, we think it is appropriate to consider some of the specific objections raised. Some commentators, who have questioned the competitive ramifications of Rule 19b–2, have premised their discussion on the assumption that the rule is designed solely or primarily to perpetuate the fixed minimum commission rate structure.[504] Although we do not believe the rule would result in anticompetitive impacts even if that were the case, we already have indicated[505] that Rule 19b–2 is one of a series of attempts to restructure the securities markets as they exist today, as well as an attempt to promote competition by premising access to exchange membership on appropirate regulatory grounds. We believe the rule stands firmly on that footing.[506] The rule is not now and never was intended to be a means of preserving fixed commission rates.

Nevertheless, it is clear that the rule is intertwined with the question of fixed rates, to some extent.[507] We have committed ourselves to a gradual reduction in the breakpoint at which commission charges on institutionalized orders should be determined by negotiation.[508] But we have learned of the drastic results generated by precipitous changes in economic conditions in the industry, especially with respect to the continued viability of brokerage firms.[509] Accordingly, we have determined to analyze thoroughly the impacts that reductions in commission charges have for the industry, before we proceed to lower further the breakpoint at which such rates may be negotiated,[510] and we note the general concurrence of most commentators on the appropriateness, from a regulatory as well as competitive viewpoint, of this course of action.[511] We do not, therefore, perceive any basis upon which it may be concluded that our rule is anticompetitive.

We also reject the suggestion[512] that Rule 19b–2 creates incentives for large conglomerates to diversify into the securities industry, and that the likelihood of such occurrences makes the rule anticompetitive. The entry of institutions into the brokerage business, provided they are willing to compete for the public's business, is beneficial to the industry, for it carries with it an infusion of new capital[513] and provides additional firms willing to compete for the public's brokerage dollar. To the extent that the entry of such conglomerates could signal a contraction in the number of brokerage firms, as some commentators predict, we believe regulatory authority exists to cope with that problem at such a time.[514]

A contention also has been made[515] concerning the possibility that Rule 19b–2 may disadvantage certain groups, such as insurance companies, which may wish to compete with existing exchange members which provide brokerage services for pension funds or other discretionary accounts. We find that no competitive disadvantage need result under our rule, since the rule operates equally to permit all money managers and others to perform brokerage services for these institutional clients. Our conclusions in this regard are set forth in detail above.[516]

Finally, it has been suggested that the Commission's rule does not eliminate the existence of preferred access rates made available by some exchanges to various institutions, and that fact is said to create competitive disadvantages for those exchanges which do not have such preferred access rates but which now must comply with Rule 19b–2.[517] We already have described the overall competitive impact of our rule. The existence of other devices which may be put to inappropriate uses does not convert a rule which, on the whole, fosters competition into one that does not;[518] but it does suggest the need to reconsider the impact of exchange rules which could be used in such a manner, to determine whether they are compatible with the policies we seek to implement today. We already have commenced such a review, and we will seek the assistance of the exchanges and other interested persons in determining whether exchange rules establishing preferred access rates for institutions and other classes of customers should be altered, modified or rescinded.[519]

Since we conclude that Rule 19b–2 will, on balance, foster, rather than retard, competition, we presumably could end our consideration of competitive factors at this juncture. Nevertheless, even if it were assumed that our rule has anticompetitive impacts, Rule 19b–2 is an appropriate exercise of our broad policymaking functions.

The only Supreme Court case to consider directly the proper appoach to a reconciliation of regulatory action taken under the Securities Exchange Act and the antitrust laws is "Silver v. New York Stock Exchange."[520] But it must be noted at the very outset that the Silver case was extremely limited on its facts—it involved review of self-regulatory actions taken by an exchange, action which the Court believed could not be reviewed by this Commission[521]—and limited in its holding—it merely held that an exchange could not deprive a nonmember of a business advantage previously enjoyed without fair procedures.[522] The Court in "Silver" did not consider situations in which self-regulatory action was reviewed by this Commission or regulatory action prescribed by this Commission after detailed, thorough and lengthy administrative proceedings. Indeed, it explicitly left certain of these questions open.[523] In a recent decision, the Supreme Court noted the limited applicability of the "Silver" decision. See "Ricci v. Chicago Mercantile Exchange."[524]

In any event, in "Silver", the Supreme Court stated that the antitrust laws were to be deemed repealed by the Securities Exchange Act, under the following test:

> Repeal is to be regarded as implied only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary. This is the guiding principle to reconciliation of the two statutory schemes.[525]

As we discuss below, we do not believe that test should be construed literally or applied to the Commission's endeavors.[526]

We have seen that Congress vested broad authority in the Commission to regulate exchanges.[527] While we disagree with the views expressed by some lower courts[528] and commentators[529] that self-regulatory acts of exchanges subject to the Commission's jurisdiction and review may, nonetheless, be reviewed by a court applying antitrust principles in an

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antitrust suit, that issue is not raised by our action today.[530] For here, we have taken action, as the governmental representative of the public interest and as a matter of regulatory policy. We believe that it would be wholly inappropriate for the courts to subject the exchanges to antitrust jurisdiction for actions we have required them to take.[531] Our unfettered ability to exercise the broad regulatory authority vested in us, and the necessity of exchange compliance with the Commission's regulatory determinations, are, by any calculation, "necessary to make the Securities Exchange Act work * * *."[532] For this reason, we believe, that, at a minimum, the establishment of our regulatory authority and the fact that the action to be taken has been initiated, considered, reviewed, and required by us[533] more than fully satisfies any test that may be attributed to the "Silver" decision.

We do not suggest, of course, that we are free to act arbitrarily or capriciously, or that we may abuse our broad discretion. The Administrative Procedure Act, as codified,[534] provides for district court view may obtain for the action we take here.[535] But the standards of the Securities Exchange Act, not of the antitrust laws, must govern our efforts.

But "Silver" does not mandate that specific regulatory actions of this Commission or even of a regulated exchange must be "necessary to make the Securities Exchange Act work * * *."[536] The standard enunciated in that case was a general one, and we have seen that the existence of Commission action presents "a different case as to antitrust exemption."[537] In discussing particular actions taken by exchanges, the Supreme Court enunciated its test for reconciliation of the securities laws and the antitrust laws, as they apply to such activities, more expansively:

> Particular instances of exchange self-regulation which fall within the scope and purposes of the Securities Exchange Act may be regarded as justified in answer to the assertion of an intitrust claim.[538]

Throughout its recent decision in the Ricci case the Supreme Court carefully states the test of antitrust exemption in these or similar terms.[539] We believe this latter standard is applicable to our efforts as well, and this conclusion is mandated by the very language of the Securities Exchange Act itself.[540]

Our painstaking review of the regulatory objectives underlying the Securities Exchange Act[541] was designed to insure that the action we take today is "necessary or appropriate" to meet the needs and aims of the Securities Exchange Act. The need to structure a central market system, the need to eliminate unfair trading advantages, the need to restore and insure investor confidence in our securities markets, the need to foster meaningful competition in the securities industry, and the need to promote the orderly introduction of competitive commission rates on large-sized securities transactions, explain the action we take today. These reasons are set forth in detail above;[542] on that basis, we find Securities Exchange Act Rule 19b-2 to be an "appropriate" exercise of our quasi-legislative policymaking functions under the Securities Exchange Act.

X. *Conclusion.* In moving forward in an area of great complexity and concern, the Commission has attempted to fulfill the broad responsibilities vested in it by the Congress in 1934. At that time, Congress could not foresee all the developments that would or could occur to change drastically the nature and mode of securities transactions executed on national securities exchanges. The recently observed development of highly sophisticated technological advances, computer hardware and software, the advent of a large increase in the institutionalization of the markets, the need for better definitional standards of the conduct of the brokerage business—all of these were matters that the authors of the Securities Exchange Act scarcely could perceive as remotely occurring, and then occurring all within less than 40 years from the adoption of the Securities Exchange Act.[543]

But, to recognize that the specific factors which have led us to enunciate broad policy in Securities Exchange Act Rule 19b-2 might not have been perceived in 1934 is the beginning of the inquiry, not its end, as some commentators have suggested. As we have seen,[544] administrative agencies such as the Commission were granted pervasive regulatory powers to insure both that unwanted events, to which Congress could not devote prompt time and attention, would be prevented and that new regulatory problems would be resolved expertly and carefully, yet as expeditiously as possible.

A new era in securities regulation is, most assuredly, unfolding. While the Congress that adopted the Securities Exchange Act could not have foreseen the specific circumstances prevailing in the securities industry today, it carefully provided the Commission with ample regulatory power to cope with and act as Congress's surrogate for the resolution of new problems.[545] As Representative Rayburn, the House sponsor of the Securities Exchange Act, noted,

> We went through the bill, and everywhere that we could find a place to give authority to the Commission to make rules and regulations to govern these matters we gave it to them * * *."[547]

And, as if to accentuate the fact that, in future circumstances such as these, when private interests opposed to reforms and restructuring of the securities industry might argue that the Commission's authority should be narrowly construed and severely limited, the Commission should forge ahead with its regulatory work unimpeded by such claims, Representative Lea noted, on the floor of the House during the debates on the Securities Exchange Act of 1934, that:

> There are two types of power delegated to the Commission, and that is true of every regulatory act. The first is a quasi-legislative power, and the other is a quasi-judicial power. When we give the Commission the right, by rules and regulations to require than an exchange shall have a certain rule governing its functions, that is a quasi-legislative power of Congress. The Commission acts for Congress in establishing such rule or regulation * * *. If we want regulation, we must give the Commission power to make its action effective * * *. This Commission is given broad powers. I will not deny that. If the Commission does not correctly use those powers, if it is not constructive in its purpose, if it does not act in harmony with the spirit of this bill, its regulation would be a failure. The success of the measure is dependent on the Commission, its ability, common sense, fidelity to duty, courage, yet moderation, in administering its powers. If the spirit and purpose of the bill shall be accepted by the Commission to which its regulation is entrusted, then this measure will be a constructive act and an aid to business.[548]

We understand that we could, and some commentators have urged that we should,[549] either take a restrictive view of our authority to act—an approach wholly at odds with the sound administrative practice of this agency for nearly 40 years—or throw up our hands, complain of the complexity of the problem as well as the intricacy of its resolution and retire from the field, with the hope that Congress will resolve these problems for us. Needless to reiterate, our function is, stated succinctly, to fill in the interstices of legislation and implement congressionally enacted mandates. The Commission was created precisely to accumulate the necessary expertise that would enable it to resolve complex policy questions such as are here involved. If and when the Congress, acting qua Congress, determines to enunciate any guidelines concerning this matter, even, of course, guidelines at variance with our understanding of the intent and policy underlying the original enactment of the Securities Exchange Act, we shall implement any policy so enunciated. But in the absence of such Congressional mandate, we not only believe we have the authority, but the obligation as well, to deal with pressing policy problems as they arise.

Over the years, since the formation of the first independent regulatory agency, the Interstate Commerce Commission, much has been written concerning the efficacy, expediency, and performance of the regulatory administrative agencies. Criticism has been leveled at these agencies for their failure appropriately to seize the initiative and to grapple with and resolve thorny and complex regulatory problems.[550] This Commission has enjoyed a high reputation for the growth and development of its expertise and the application of that expertise to devise novel approaches to unique or trying problems of a regulatory nature.[551] Our conclusion, that this is neither the time nor the place to alter that record of administrative initiative, is bolstered by reference to the remarks of one of our first chairmen, James Landis, uttered in 1938, but at least equally applicable today:

The assumption of responsibility by an agency is always a gamble that may well make more enemies than friends. The easiest course is frequently that of inaction. A legalistic approach that read a governing statute with the hope of finding limitations upon authority rather than grants of power with which to act decisively is thus common * * *. [T]here is an enormous difference between the legalistic form of approach that from the negative vantage of statutory limitations looks to see what it must do, and the approach that considers a problem from the standpoint of finding out what it can do.[52]

XI. *Commission Action.* Pursuant to authority in sections 2, 6, 11, 17, 19, and 23(a) of the Securities Exchange Act of 1934, the Securities and Exchange Commission hereby adopts a new § 240.19b-2 under Part 240 of Chapter II of Title 17 of the Code of Federal Regulations reading as follows:

MEMBERSHIP ON NATIONAL SECURITIES EXCHANGES

§ 240.19b-2 Utilization of exchange memberships for public purposes.

(a) Except as otherwise provided in paragraph (c) of this section, each securities exchange registered with the Commission shall, by rule, require every member of such exchange to have as the principal purpose of its membership the conduct of a public securities business. A member shall be deemed to have such a purpose if at least 80 percent of the value of exchange securities transactions effected by it during the preceding 6 calendar months, whether as a broker or dealer, is effected for or with persons other than affiliated persons, or is effected pursuant to transactions of the kind described below:

(1) Any transaction by a registered specialist in a security in which he is so registered;

(2) Any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(3) Any transaction by a block positioner acting as such, except where an affiliated person is a party to the transaction;

(4) Any stabilizing transaction effected in compliance with § 240.10b-7 to facilitate a distribution of a security in which the member effecting such transaction is participating;

(5) Any bona fide arbitrage transaction, including hedging between an equity security and a security entitling the holder to acquire such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer or similar transaction involving a recapitalization;

(6) Any transaction effected in conformity with a plan designed to eliminate floor trading activities which are not beneficial to the market, which plan has been adopted by the exchange and declared effective by the Commission;

(7) Any transaction made with the prior approval of a floor official to permit the member effecting such transaction to contribute to the maintenance of a fair and orderly market, or any purchase or sale to reverse any such transaction; or

(8) Any transaction to offset a transaction made in error.

(b) (1) For purposes of this section, an "affiliated person" of a member shall include:

(i) Any person directly or indirectly controlling, controlled by, or under common control with such member, whether by contractual arrangement or otherwise: *Provided,* That the right to exercise investment discretion with respect to an account, without more, shall not constitute control;

(ii) Any principal officer, stockholder or partner of such member or any person in whose account such person has a direct or material indirect beneficial interest; and

(iii) Any investment company of which such member, or any person controlling, controlled by or under common control with such member, is an investment adviser within the meaning of the Investment Company Act of 1940.

(2) A person shall be presumed to control another person, for purposes of this section, if such person has a right to participate to the extent of more than 25 percent in the profits of such other person or owns beneficially, directly or indirectly, more than 25 percent of the outstanding voting securities of such person.

(3) The principal officers of a member include the president, executive vice president, treasurer, secretary, or any other person performing a similar function for an incorporated or unincorporated organization. A principal stockholder or partner of a member is any natural person actively engaged in the business of the member and beneficially owning, directly or indirectly, more than 5 percent of the outstanding voting securities of a member organization or having the right to participate to the extent of more than 5 percent in the profits of such person.

(c) (1) Each exchange shall provide in its rules adopted pursuant to paragraph (a) of this section that any member of such exchange who does not comply with the requirements of such exchange rule, and who acquired membership on such exchange prior to the date of the adoption of this section, shall nevertheless be presumed, for a period not to exceed 3 years following the date of the adoption of this section, to have, as the principal purpose of its membership, the conduct of a public securities business, if

(i) Within 30 days after the date of the adoption of such exchange rule, such member shall furnish a written commitment to such exchange to make good faith efforts to comply with the requirements of such exchange rule, accompanied by a written plan setting forth in detail those steps such member intends to take to comply with such requirements; and

(ii) Prior to the expiration of each of the first two 1-year periods immediately following the date of the adoption of this section, such member shall file with such exchange a statement, setting forth the steps which have been taken leading toward compliance with the requirements of such exchange rule, together with an updated plan, specifying all further action such member intends to take to achieve such compliance.

(2) No plan filed pursuant to such exchange rule shall be deemed to satisfy the requirements of such exchange rule unless the plan has been declared effective by the exchange with which it is filed after the exchange has first reviewed the plan and determined that it is reasonably calculated to enable such member to comply with the requirements of such exchange rule within 3 years from the date of the adoption of this section.

(d) The failure of an exchange diligently and effectively to enforce any provision of a rule adopted by it pursuant to this section, or to require diligent compliance by any of its members with the terms of an effective plan filed by such member with that exchange pursuant to paragraph (c) of this section shall constitute a violation of this section.

(Secs. 2, 6, 11, 19, 23(a), 48 Stat. 881, 885, 891, 897, 989, 901, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 10, 78 Stat. 580, 15 U.S.C. 78b, 78f, 78k, 78q, 78s, 78w(a))

Securities Exchange Act Rule 19b-2 (17 CFR 240.19b-2), requiring all national securities exchanges to make their exchange memberships available to any person or entity having as the principal purpose of its membership the conduct of a public securities business, is hereby adopted, effective March 15, 1973.

By the Commission.

RONALD F. HUNT,
Secretary.

JANUARY 16, 1973.

See footnotes at end of document.

[1] See, e.g., Securities and Exchange Commission, Statement on the Future Structure of the Securities Markets (GPO ed., 1972) ("Policy Statement"). As we indicate below (see pp. 3905-3906, infra), the Commission's public statements on these issues, as well as the related testimony and other data presented to the Commission, apparently were considered and utilized by two congressional subcommittees in their analyses of the problems faced by the securities industry; the congressional inquiries adduced testimony and other evidence which, in turn, has assisted the Commission in its consideration of these issues. [See notice of proposal to adopt this rule published in the FEDERAL REGISTER for August 12, 1972, at 37 F.R. 16409, 16411.]

[2] Id., at p. 21.

[3] See discussion infra, pp. 3903-3906.

[4] This position was first expressed by the Commission in its letter transmitting the Institutional Investor Study to Congress. See Securities and Exchange Commission Institutional Investor Study Report, H.R. Doc. No. 92-64 92d Cong., 1st Sess. pt. 1 (1971), pp. xxiii-xxv ("Institutional Investor Study"). Subsequently, the Commission reiterated this view in its Policy Statement, supra n. 1, at pp. 2, 7-13. Similar views to those initially expressed by the Commission concerning the need for centralization of the Nation's securities markets have been advocated by others. See, e.g., Subcommittee on Commerce and

Finance of the House of Representatives Committee on Interstate and Foreign Commerce, 92d Cong., 2d Sess., Securities Industry Study 117–130 (Comm. Print, 1972) ("House Study"); Martin, The Securities Markets: A Report, with Recommendations 5 (1971); Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., Report of the Securities Industry Study 45–46 (Comm. Print, 1972).

[5] See, e.g., Securities Exchange Act Release No. 9850 (Nov. 8, 1972), 37 FR 24172 (Nov. 15, 1972), announcing the adoption of Securities Exchange Act Rule 17a–15, 17 CFR 240.17a–15, requiring registered national securities exchanges, national securities associations and brokers and dealers in securities who are not members of such exchanges or associations to make available, through vendors of market transaction information, price and volume reports as to completed transactions in securities registered on such exchanges.

[6] *See* Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at pp. 1–2, 4; 37 FR 16409, 16410 (Aug. 12, 1972).

[7] Robert W. Stark, Jr. Inc. v. New York Stock Exchange, Inc., 346 F. Supp. 217, 228 (S.D. N.Y.), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972).

[8] See Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at pp. 6–7; 37 FR 16409, (Aug. 12, 1972).

[9] See letter, dated May 26, 1972, from William J. Casey, chairman, Securities and Exchange Commission, to the president of each national securities exchange, Securities Exchange Act Release No. 9623 (May 30, 1972).

[10] See discussion infra, pp. 3920–3924.

[11] See discussion infra, pp. 3906–3909.

[12] See discussion infra, pp. 3912–3913.

[13] See discussion infra, p. 3906.

[14] Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at pp. 1–2; 37 FR 16409, 16410 (Aug. 12, 1972).

[15] National Broadcasting Co. v. United States, 319 U.S. 190, 225 (1943). Accord, United States v. Southwestern Cable Co. 392 U.S. 157, 176–177 (1968); cf. American Trucking Associations, Inc. v. United States, 344 U.S. 298, 308–309 (1953); Delta Airlines, Inc. v. Civil Aeronautics Board, 455 F. 2d 1340 (C.A. D.C., 1971); see also, Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 202, 209 (1947); California v. LoVaca Gathering Co., 379 U.S. 366, 371 (1965).

[16] See In the Matter of Proposed Securities Exchange Act Rule 19b–2, Commission File No. S7–452 ("Commission File No. S7–452"), written comments of Chicago Board of Trade (Sept. 29, 1972); State of Connecticut (Sept. 29, 1972); American Life Convention-Life Insurance Association of America (Oct. 3, 1972).

[17] See, e.g., National Broadcasting Co. v. United States, supra n. 15, 319 U.S. at 216, 225–226; Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940); Landis, The Administrative Process 66–67 (1938).

[18] The text of Rule 19b–2 is set forth at p. 3928, infra, and a detailed discussion of its provisions and applications is set forth at pp. 3920–3924, infra. This synopsis of the rule's provisions is intended primarily as background for the discussion that follows.

[19] There are presently 12 securities registered with the Commission. Securities and Exchange Commission Thirty-Seventh Annual Report 73 (1971). One of these exchanges, the Chicago Board of Trade, apparently does not at present, conduct transactions in securities. The provisions of rule 19b–2 only apply to exchanges upon which securities are traded.

[20] New York Stock Exchange Rule 318, 2 CCH, New York Stock Exchange Guide Para. 2318; American Stock Exchange Rule 314 2 CCH, American Stock Exchange Guide Para. 9372B.

[21] Institutional Investor Study, supra n. 4, at pt. 4, p. 2308.

[22] Id., at pp. 2308–2310; see also discussion infra, pp. 3914–3915.

[23] Securities Exchange Act Rule 19b–2(a).

[24] Id., at subsections (a)(1)–(8).

[25] Id., at subsection (b)(1). For purposes of the rule, "Control" is presumed on the part of any person if that person has a right to participate to the extent of more than 25 percent in the profits of another person or entity, or if such person owns beneficially, directly or indirectly, more than 25 percent of the outstanding voting securities of another person.

The rule also provides that the right to exercise investment discretion with respect to any account, in and of itself, shall not be presumed to constitute control.

[26] Id., at subsection (b)(2). Principal officers are defined by rule 19b–2 as the president, executive vice-president, treasurer, secretary, or any other person performing similar functions for an incorporated or unincorporated organization or entity.

The rule defines principal stockholders and principal partners as natural persons actively engaged in the business of the member and owning beneficially, directly or indirectly, more than 5 percent of the outstanding voting securities of an exchange member or member organization or having the right to participate to the extent of more than 5 percent in the profits of such a member.

[27] Id., at subsection (b)(3).

[28] Id., at subsection (c).

[29] Ibid.

[30] Id., at subsection (d).

[31] In this section, we discuss the various hearings and other procedures which have furnished us with statistics, facts, other data, views and opinions upon which Rule 19b–2 is predicated. Our initial inquiry began as an examination of fixed commission charges by exchange members, but subsequently expanded to include broad questions of market structure. A detailed discussion of our determinations respecting the fixed minimum rate structure is set forth below, pp. 3914–3916, infra.

[32] Since 1968, we have carefully scrutinized market structure developments and problems. The interrelationship of most of the problems we have encountered makes it clear that each of our previous studies is an appropriate basis upon which to predicate agency policymaking such as we are engaged in now. In discussing one aspect of these problems, a congressional subcommittee recently has noted:

> "It is often said that while most industries study problems to death, the securities industry studies solutions to death. During the past decade there have been four major studies of the securities industry conducted under the auspices of the SEC. Additionally, the SEC has conducted two major administrative proceedings focusing on the commission rate question and its impact on the structure of the securities industry. These matters have also received the attention of this subcommittee and the Senate Securities Subcommittee in the current studies of the securities industry. * * * The time for study has ended. The time for action has arrived."

House Study, supra n. 4, at p. 141.

[33] A number of persons commenting on our proposal have urged the need for further extensive consideration of the broad policy issues involved. See, e.g., Commission File No. S7–452, supra n. 16, written comments of PBW Stock Exchange, Inc. (Oct. 2, 1972); Antitrust Division of the United States Department of Justice (Oct. 3, 1972); American Life Convention-Life Insurance Association of America (Oct. 3, 1972). We concur in the necessity for careful and detailed consideration of these matters, as we discuss below, pp. 3911–3914, infra, and we believe the varied procedures we have employed have furnished us with the extensive consideration of the problem we believe is appropriate. As the only court to have considered the precise issue involved here has remarked:

> "Such rules, and directions to the exchanges to make rules, cannot however, because of their far sweeping effect, be adopted in a cursory or incomplete manner, or without having extensive hearings and examination into the subject matter, and without permitting those interested, representing the public and groups in the securities industry an opportunity for a full expression of views. This course is being pursued right at the present time and apparently with diligence."

Robert W. Stark, Jr., Inc. v. New York Stock Exchange, Inc., 346 F. Supp. 217, 227 (S.D. N.Y.), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972) (emphasis supplied).

[34] House Study, supra n. 4, at p. 121.

[35] Thus, the Commission stated in its very first report to the Congress on its administration of the Federal securities laws that it had been concerned with problems analogous to those we discuss today.

> "A comprehensive survey was made of the activities of specialists, floor traders, and odd-lot dealers on the New York Stock Exchange and on the New York Curb Exchange, as well as an analysis of trading on other exchanges. On the basis of this study, suggested rules for the regulation of trading on exchanges were formulated. These rules were sent to all national securities exchanges with the Commission's request or recommendation that they be adopted. * * * It is not considered that these suggested rules shall represent the final regulations to be promulgated regarding this matter. They are experimental in character and may be changed if further study indicates a necessity therefor.
>
> "Various phases of trading on exchanges were covered by these rules, including limitations on a member's trading while on or off the floor of an exchange; participation by members in joint accounts; * * * handling of customers' discretionary accounts and discretionary orders; * * * members acting in the dual capacity of brokers and dealers; * * * successive transactions by members * * *.
>
> "To assist in the detection of violations of these trading rules, to study the effect of such rules on market activities and operations, and to assist the Commission in the formulation of further rules in connection with these subjects and correlated matters, various detailed report forms were devised to be filed by exchanges and members of exchanges. These reports disclosed, among other things, the extent of trading by members and partners for their own account as compared with the total volume of transactions on exchanges * * *.
>
> "Approximately 380 such reports are filed each week and a system has been devised for the expeditious analysis in order * * * to determine whether further rules are necessary to make exchanges free, open, and orderly market places for securities."

Securities and Exchange Commission, First Annual Report 13–14 (1935) (emphasis supplied).

[36] The Commission's authority with respect to the activities, rules, policies and practices of registered securities exchanges is couched in terms of whether, in the Commission's

opinion, administrative action is "necessary or appropriate." See, e.g., sections 11 and 19 of the Securities Exchange Act, 15 U.S.C. 78k and 78s.

[37] See Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker (G.P.O. ed., 1936), prepared pursuant to a congressional directive contained in section 11(e) of the Securities Exchange Act, 15 U.S.C. 78k(e).

[38] See p. 3903, supra. Securities and Exchange Commission, First Annual Report 14 (1935).

[39] See, e.g., 2 Securities and Exchange Commission Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 6-7 (1963) ("Special Study"); Securities Exchange Act Release No. 8239 (Jan. 26, 1968) at p. 2.

[40] See p. 3904, infra.

[41] See pp. 3904-3905, infra.

[42] See 2 Special Study, supra n. 39, at p. 295; New York Stock Exchange Const. Art. XV.

[43] 2 Special Study, supra n. 39, at p. 295.

[44] Securities Exchange Act Release No. 8239 (Jan. 26, 1968) at p. 2.

[45] See, e.g., Securities Exchange Act Release No. 8239 (Jan. 26, 1968) at p. 3.

[46] Id., at pp. 3-4.

[47] See Securities Exchange Act Release No. 8239 (Jan. 26, 1968) at pp. 5-6.

[48] Id., at p. 1.

[49] Securities Exchange Act Release No. 8324 (May 28, 1968).

[50] Id., at p. 1.

[51] Id., at Order Directing Public Investigation and Designating Officers to Take Testimony, p. 1; see also, Securities Exchange Act Release No. 8328 (June 5, 1968), at p. 1.

[52] Securities Exchange Act Release No. 8328 (June 5, 1968).

[53] Id., at p. 1.

[54] Id., at pp. 1-2 (emphasis supplied).

[55] Securities Exchange Act Release No. 8348 (July 1, 1968).

[56] Securities Exchange Act Release No. 8432 (Oct. 21, 1968).

[57] The term "third market" signifies "[t]he over-the-counter market for exchange[-listed] stocks * * *." 2 Special Study, supra n. 39, at p. 716 n. 14; see also, id., at pp. 870, et seq.

[58] Securities Exchange Act Release No. 8791 (Dec. 31, 1969) at p. 1.

[59] Id., at pp. 1-4. Among the questions posed were those concerning the justification, if any, for fixing commission charges in addition to the execution and clearance of securities transactions "at differing rates to cover similar services for any classes of nonmember customers" (id., at p. 2); in posing this particular question, the Commission differentiated explicity between "financial institutions * * *" and "public investors"); the reason for higher charges for execution and clearance of securities transactions to any class of nonmember customers (ibid.); and the appropriateness of restrictions on an exchange member trading off the exchange (id., at pp. 3-4).

[60] See pp. 3914-3916, infra, for a detailed discussion of the Commission's resolution of questions regarding fixed rates.

[61] See pp. 3914-3915, infra; Independent Broker-Dealers' Trade Association v. Securities and Exchange Commission, 442 F. 2d 132 (C.A. D.C.), certiorari denied, 404 U.S. 828 (1971).

[62] See letter, dated October 22, 1970, from Hamer H. Budge, Chairman, Securities and Exchange Commission, to Robert W. Haack, president, New York Stock Exchange (p. 1), annexed to Securities Exchange Act Release No. 9007 (Oct. 22, 1970).

[63] See Securities Exchange Act Release No. 9079 (Feb. 11, 1971).

[64] See Securities Exchange Act Release No. 9234 (June 28, 1971).

[65] In the Matter of SEC Rate Structure Investigation of National Securities Exchanges, Commission File No. 4-144 (1968-1971).

[66] Ibid.

[67] See, e.g., Securities Exchange Act Releases Nos. 8328 (June 5, 1968), 8432 (Oct. 21, 1968), 8791 (Dec. 31, 1969), and 9315 (Aug. 26, 1971).

[68] See, e.g., Securities Exchange Act Release No. 9007 (Oct. 22, 1970). See also, Securities Exchange Act Release No. 8860 (Apr. 2, 1970), where the Commission stated (p. 1):

"I[t] is vital to the public interest that small investors continue to be able to participate directly in equity investment, that they have access to exchange markets and that needed capital be retained within the securities business."

[69] See S. Rep. No. 1237, 90th Cong., 2d Sess. 1 (1968).

[70] See id., at p. 2; H.R. Rep. No. 1665, 90th Cong., 2d Sess. 2-3 (1968).

[71] See discussion infra. pp. 3906-3909.

[72] S. Rep. No. 1237, 90th Cong., 2d Sess. 2-4 (1968); H.R. Rep. No. 1665, 90th Cong., 2d Sess. 3 (1968).

The bill ultimately adopted, authorizing this study—Public Law 90-438, 82 Stat. 453 (1968)—required the Commission to report its findings to the Congress, "together with (the Commission's) recommendations, including such recommendations for legislation as it deems advisable." Sec. 19(e) of the Securities Exchange Act, 15 U.S.C. 78s(e). While we set forth below in some detail our belief that the Securities Exchange Act accords us ample authority to resolve the issues here discussed (see pp. 3906-3912, infra), we find this an appropriate point to deal with the rather surprising and restrictive contention of the Antitrust Division of the Department of Justice that the adoption by Congress of section 19(e) of the Securities Exchange Act—authorizing the Institutional Investor Study—creates some type of presumption that the Commission's proposed rule reflects an impermissible exercise of agency authority. See Commission File No. S7-452, supra n. 16, written comments of Antitrust Division of the U.S. Department of Justice (Oct. 3, 1972), at p. 31. While section 19(e) of the Securities Exchange Act does state, as the Antitrust Division avers (id.), that Congress authorized the study to consider what legislative measures, if any, might be appropriate, the Division pointedly deletes any reference to the next sentence of that section, quoted above in this footnote, to the effect that Congress sought the Commission's recommendations for action, "including," but certainly not limited to, legislative action. As the Supreme Court noted in an analogous context in which other divisions of the Department of Justice concurred, "We cannot infer so much from so little * * *." Permian Basin Area Rate Cases, 390 U.S. 747, 774 (1968). In any event, the Commission noted, in transmitting its completed Institutional Investor Study to Congress, that its research efforts would be of general assistance to all persons concerned with the securities industry:

"As the Commission, other governmental units and the financial community continue to review the report and to analyze further the wealth of data collected by the study, we anticipate that it will serve as a basis for further conclusions and additional recommendations not only by the Commission but also by other governmental, and self-regulatory bodies."

See Institutional Investor Study, supra n. 4, at pt. 1, p. vi. See also id. at p. viii; id. at pp. xx-xxi.

[73] See p. 390A, supra.

[74] See Institutional Investor Study, supra n. 4, at pt. 1, pp. 96, et seq.

[75] Institutional Investor Study, supra n. 4, at pt. 4, p. 1460.

[76] Id., at pt. 4, pp. 1462-1463. The Study found, however, that only a small fraction of all month-to-month price changes can be associated with institutional imbalances.

[77] Id., at p. 1465.

[78] Id., at pt. 4, p. 1397 nn. 1 and 2.

[79] See id., at pt. 4, p. 1461, where the Study noted:

"* * * On the basis of these figures, however, it is apparent that institutions cannot trade directly and solely among themselves without substantial changes both in the volume of their trading and in their trading patterns. Moreover, on a monthly basis the dollar amounts of these net trading imbalances appear too large to expect market makers alone to bridge the time gaps between institutional orders by inventorying the stock. It does not seem feasible to segregate institutions into a separate trading market wholly apart from other investors."

See also, Securities Exchange Act Release No. 8860 (Apr. 2, 1970) at p. 2:

"The Commission is aware of the contribution of small investors to the depth and liquidity of our trading markets and considers it to be vital to the public interest that such investors continue to be able to participate directly in equity investment."

[80] See p. 3904, supra.

[81] Institutional Investor Study, supra n. 4, pt. 1, pp. xxiii-xxiv.

[82] See Securities Exchange Act Release No. 9315 (Aug. 26, 1971).

[83] Id. at pp. 1-2. The other issues upon which testimony, views, evidence, data and opinions were sought were the need for differing, uniform, additional or modified regulation of the securities markets and the need for a composite tape.

[84] In the Matter of the Structure, Operation and Regulation of the Securities Markets, Commission File No. 4-147 (1971) ("Commission File No. 4-147").

[85] Id. (Transcript of Hearings), at p. 3,007.

[86] We discuss below, see pp. 3911-3914, infra, the appropriateness of the hearing procedures we have employed in connection with our proposed rule. But it should be noted here that a number of commentators in this rulemaking proceeding, in an attempt to discredit these extensive and detailed hearing procedures, have suggested that we may not have fully understood a particular issue—for example, the nature of institutional membership on the PBW Stock Exchange, Inc. See, e.g., Commission File No. S7-452, supra n. 16, written comments of PBW Stock Exchange (Oct. 2, 1972), Channing Management Corp. (Oct. 5, 1972), American Life Convention-Life Insurance Association of America, American Insurance Association (Oct. 3, 1972). These lengthy Commission proceedings, however, reflect the fact that we obtained a detailed discussion of the nature of institutional membership, not only during our hearings on future market structure, see Commission File No. 4-147, supra n. 84, Statement of PBW Stock Exchange, Inc., Regarding Institutional Membership. See also Securities Exchange Act Release Nos. 8432 (Oct. 21, 1968), 8791 (Dec. 31, 1969), 9315 (Aug. 28, 1971), but also during the preceding hearings on commission rates and related practices in recapturing, rebating and redirecting commissions.

See footnotes at end of document.

[87] H.R. Doc. No. 92-231, 92d Cong., 1st Sess. (1971) ("Unsafe and Unsound Study").

[88] 15 U.S.C. 78kkk.

[89] Unsafe and Unsound Study, supra n. 87, at p. 2.

[90] See infra, pp. 3914-3916.

[91] See Unsafe and Unsound Study, supra n. 87, at pp. 27, 47, 163.

[92] As we there noted:

"The Commission has completed a series of hearings and special studies extending over a period of three and a half years * * *.

"This policy statement is based on the data and testimony accumulated in this entire process of hearings and studies. It draws on the Commission's analysis of that data, as well as on the experience gained through its years of administering the securities laws."

Policy Statement, supra n. 1, at p. 5.

[93] Id., at p. 6.

[94] Id., at pp. 14-17. At that time, we announced that we would take steps to lower the breakpoint on negotiated rates to $300,000, and this was accomplished last April. Subsequently, we have reaffirmed our intention to seek negotiated rates at lower levels, down to $100,000, after we have had an opportunity to review the results of negotiation on portions of orders over $300,000. See infra, pp. 97-108.

[95] Policy Statement, supra n. 1, at pp. 13-18. We devoted detailed consideration to the quality of research and execution by brokerage firms operating in all sectors of the markets.

[96] Id., at pp. 7-13. This central market system is still in the process of delineation, but we recognized the need, among other things, for comprehensive and composite disclosure of price, volume and quotations on listed securities, wherever traded. As we have noted, p. 2 n. 5, supra, meaningful progress toward this end has been achieved. Similarly, we envision a system of competing markt makers, eliminating barriers to the kind of competition that is meaningful to investors.

[97] Policy Statement, supra n. 1, pp. 20-24.

[98] See, supra, n. 20.

[99] Policy Statement, supra n. 1, at pp. 21-22.

[100] See discussion infra, pp. 3906-3909.

[101] Policy Statement, supra n. 1, at pp. 24-25.

[102] Id., at p. 20.

[103] See p. 3914, infra.

[104] Policy Statement, supra n. 1, at p. 21.

[105] See Letter, dated February 15, 1972, from William J. Casey, Chairman, Securities and Exchange Commission, to each national securities exchange.

[106] Ibid.

[107] See Letter, dated March 10, 1972, from William J. Casey, Chairman, Securities and Exchange Commission, to each national securities exchange.

[108] See Letter, dated March 13, 1972, from William J. Casey, Chairman, Securities and Exchange Commission, to each registered securities exchange.

[109] See Senate Res. No. 109, 92d Cong., 1st Sess.; 117 Cong. Rec. S. 9506-9507 (Daily ed., June 21, 1971). See also 116 Cong. Rec. 39346 (Dec. 1, 1970) (Statement of Rep. Staggers).

[110] See, e.g., Hearings on S. 1164 and S. 3347 before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs, 92d Cong., 2d Sess., pt. II at 655, 701, 711 (1972) ("Senate Hearings on Institutional Membership"); Hearings on the Study of the Securities Industry before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 92d Cong., 2d Sess., pt. 9 at 4450 (1972) ("1972 House Hearings").

[111] 1972 House Hearings, supra n. 110, at pt. 9, p. 4384; Senate Hearings on Institutional Membership, supra n. 110, at pt. II, p. 197.

[112] S. 1164, 92d Cong., 1st Sess. (1971); S. 3347, 92d Cong., 2d Sess. (1972).

[113] Securities and Exchange Commission, White Paper on Institutional Membership Presented by Chairman William J. Casey to the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs (Apr. 20, 1972) ("White Paper"), reprinted at Senate Hearings on Institutional Membership, supra n. 110, at p. 197; 1972 House Hearings, supra n. 110, at p. 4384.

[114] House Study, supra n. 4, at pp. 149-150.

[115] See S. 4071, 92d Cong., 2d Sess. Sec. 2 (Oct. 9, 1972), 118 Cong. Rec. S. 17218 (Daily ed., Oct. 9, 1972). In sponsoring this legislation, Senator Bennett aptly noted that this Commission had "not sat idly by to let present problems continue unchallenged." 118 Cong. Rec. S. 17219 (Daily ed., Oct. 9, 1972).

[116] See n. 9, supra.

[117] These differences were noted in our release publishing proposed Securities Exchange Act Rule 19b-2 for public comment:

"The * * * rule departs in several respects from the rule the Commission, on May 26, 1972, requested the Presidents of all registered securities exchanges to adopt. The first sentence of section 1 has been modified to clarify that the proposed rule is intended to relate to the purpose of exchange memberships. In addition, clause 2(i) of the rule originally sent to all exchanges has been deleted. That provision specifically had included partners, officers, directors and their immediate families within the definition of 'affiliated person.' It does not appear that the existence of these specified relationships should have the same consequences that result from affiliation, except where the general standard utilized to measure affiliation in other circumstances, that is, the presence or absence of a control relationship, is applicable to them."

Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at p. 7; 37 FR 16409, 16411 (Aug. 12, 1972).

[118] See discussion infra, pp. 3920-3924.

[119] Securities Exchange Act Release No. 9716 (Aug. 3, 1972); 37 FR 16409 (Aug. 12, 1972).

[120] Id., at pp. 1, 5; 37 FR at 16409-16410.

[121] Id., at p. 5; 37 FR at 16411.

[122] Id., at pp. 7-9; 37 FR at 16411-16412.

[123] Securities Exchange Act Release No. 9808 (Oct. 5, 1972); 37 FR 21447 (Oct. 11, 1972).

[124] Commission File No. S7-452, supra n. 16, Transcript pp. 40, 130, 228.

[125] The Securities Exchange Act, as we discuss below, pages 3906-3912, infra, was intended to be a response to many problems extant in the securities industry in 1934. Our concern, for purposes of Securities Exchange Act Rule 19b-2, primarily is with those objectives of the legislation concerning broad administrattive regulation of exchanges.

[126] See Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963).

[127] See, e.g., S. 1826, 68th Cong., 1st Sess. (1924); H.R. 2703, 68th Cong., 1st Sess. (1924); H.R. 5607, 70th Cong., 1st Sess.

[128] For example, H.R. 4, n. 127, supra, was designed to regulate short selling and H.R. 2703, n. 127, supra, was an attempt to regulate so-called "bucket shop" operations and margin transactions.

[129] Preamble, Securities Exchange Act of 1934, 48 Stat. 881 (1934).

[130] See section 4 of the Act, 15 U.S.C. 78d.

[131] See S. Res. No. 84, 72d Cong., 1st Sess. (Dec. 14, 1931). The investigation lasted for over 2 years and resulted in the compilation of some 20 volumes of testimony and exhibits. Part of the investigation included hearings on the predecessor to the bill that ultimately was enacted as the Securities Exchange Act—S. 2693—a bill to regulate the national securities exchanges. See pp. 3907-3908, infra.

[132] See, e.g., Report of the Senate Committee on Banking and Currency on Stock Exchange Practices, S. Rep. No. 1455, 73d Cong., 2d Sess. (1934), at 30-47.

[133] Id., at p. 31.

[134] Id., at p. 36.

[135] Ibid.

[136] Id., at p. 47.

[137] The results of the investigation were summarized in a 384-page report submitted to the Senate on June 6, 1934. See Report of the Senate Committee on Banking and Currency on Stock Exchange Practices, n. 132, supra. This report is discussed in further detail infra, at p. 3908, et seq. The Senate committee's report was submitted to the Senate contemporaneously with the passage of the Securities Exchange Act.

[138] Id., at pp. 48-49.

[139] Id. at pp. 80-81; see also, S. Rep. No. 792, 73d Cong., 2d Sess. 4 (1934).

[140] Committee on Stock Exchange Regulation, Report to Secretary of Commerce, 73d Cong., 2d Sess. (Comm. Print, 1934) at p. 7; id., at pp. 5-6. The Roper Committee included John Dickinson (Chairman), A. A. Berle, Jr., Arthur H. Dean, J. M. Landis, and Henry L. Richardson. When adopted in 1933, the Securities Act provided that its administration should reside with the Federal Trade Commission.

[141] Id., at pp. 8-9.

[142] Id., at p. 12.

[143] Ibid.

[144] H.R. Rep. No. 1383, 73d Cong., 2d Sess., 1 (1934).

[145] Id., at p. 2.

[146] H.R. 7852, 73d Cong., 2d Sess. (1934); S. 2693, 73d Cong., 2d Sess. (1934).

[147] 78 Cong. Rec. 2270-2271 (1934).

[148] 78 Cong. Rec. 7697 (1934). See also, 78 Cong. Rec. 7925 (statement of Rep. Chapman); 78 Cong. Rec. 7689 (statement of Rep. Sabath); 78 Cong. Rec. 7690 (statement of Rep. Sabath); 78 Cong. Rec. 7866 (statement of Rep. Wolverton); 78 Cong. Rec. 7925 (statement of Rep. Chapman); 78 Cong. Rec. 8163 (statement of Sen. Fletcher); 78 Cong. Rec. 8174 (statement of Sen. Fletcher) (1934).

[149] Hearings on H.R. 7852 and H.R. 8720 before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 20 (1934).

[150] Id., at p. 26.

[151] Compare H.R. 7852, 73d Cong., 2d Sess. (1934), with H.R. 8720, 73d Cong., 2d Sess. (1934).

[152] See S. 2693, 73d Cong., 2d Sess., section 10 (1934); H.R. 7852, 73d Cong., 2d Sess., section 10 (1934).

[153] See Hearings on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 124 (1934) (emphasis supplied). See also, id., at pp. 117, 123.

[154] See section 11 of the Securities Exchange Act, 15 U.S.C. 78k, which provides, in pertinent part, that

"(a) The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, (1) to regulate or prevent floor trading by members of national securities exchanges, directly or indirectly for their own account or for discretionary accounts, and (2) to prevent such excessive trading on the exchange but off the floor by members, directly or indirectly for their own account, as the Commission may deem detrimental to the maintenance of a fair and orderly market."

[155] 78 Cong. Rec. 7862 (1934).

[156] Securities Exchange Act of 1934, section 11(e), 15 U.S.C. 78k(e). This report was submitted to Congress on June 20, 1936. See Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker (G.P.O. ed., 1936). In our report, we concluded, inter alia, that, although the combination of the broker and dealer functions did involve serious problems of conflict of interest, there was no need to legislate a complete segregation of these functions inasmuch as we had been granted ample administrative power to deal with most of the known abuses. Id., at pp. 109–110.

[157] Compare H.R. 9323, 73d Cong., 2d Sess. (1934), with S. 3420, 73d Cong., 2d Sess. (1934).

[158] S. Rep. No. 792, 73d Cong., 2d Sess. 5 (1934).

[159] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 6–7 (1934).

[160] Id., at p. 15.

[161] Ibid.

[162] 78 Cong. Rec. 7696. Representative Sabath observed in this context that:

"There is no man living, there is no committee in existence, that could write in any bill all the desirable regulation for stock exchanges. Consequently, we must delegate this power to the agency we designate to enforce this legislation * * *."

78 Cong. Rec. 8092. See 78 Cong. Rec. 8091 (statement of Representative Lea).

[163] 78 Cong. Rec. 8011 (1934). See also, S. Rep. No. 792, 73d Cong., 2d Sess. 5 (1934); 78 Cong. Rec. 7862 (statement of Rep. Lea); 78 Cong. Rec. 7869–7869 (statement of Rep. Maloney); 78 Cong. Rec. 7691 (statement of Rep. Cox); 78 Cong. Rec. 8091 (statement of Rep. Lea).

[164] See pp. 3906–3909, supra.

[165] Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 185–186 (1941).

[166] Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968); see also, American Commercial Lines, Inc. v. Louisville & Nashville Railroad Co., 392 U.S. 571, 592 (1968).

[167] Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 194 (1941).

[168] United States v. Southwestern Cable Co., 392 U.S. 157, 177 (1968), citing Permian Basin Area Rate Cases, 390 U.S. 747, 780.

[169] See, Securities and Exchange Commission v. C. M. Joiner Leasing Corp., 320 U.S. 344 (1943); Securities and Exchange Commission v. United Benefit Life Ins. Co., 387 U.S. 202 (1967); Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963); Tcherepnin v. Knight, 389 U.S. 332 (1967); Superintendent of Insurance of the State of New York v. Bankers Life & Cas. Co., 404 U.S. 6 (1971); Affiliated Ute Citizens v. United States, 406 U.S. 128, 151 (1972).

See also, Landis, The Administrative Process 17 (1968):

"When today we think of * * * the stock exchange problem, we thing of [it] * * * in terms of the responsibility for [its] solution as it may rest with the * * * Securities and Exchange Commission."

See also, id., at pp. 14–15, 54–55.

[170] See Securities and Exchange Commission v. C. M. Joiner Leasing Corp., supra, 320 U.S. 344, 349.

[171] 320 U.S. 344, 350–351; see also, Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968).

[172] Congress recognized that "control of the exchange mechanism is a necessary part of any effective regulation." H.R. Rep. No. 1383, 73d Cong. 2d Sess. 14 (1934).

[173] 15 U.S.C. 78b.

[174] Ibid.

[175] Ibid. (emphasis supplied).

[176] The Senate Committee considering the Securities Exchange Act viewed that Act and the Securities Act of 1933, 15 U.S.C. 77a, et seq., as vesting "in the Securities and Exchange Commission jurisdiction over the source of and traffic in securities." S. Rep. No. 1455, 73d Cong., 2d Sess. 393 (1934).

[177] See pp. 36–53, supra.

[178] 15 U.S.C. 78w(a).

[179] See, e.g., United States v. Southwest Cable Co., 392 U.S. 157, 181 (1968); Permian Basin Area Rate Cases, 390 U.S. 747, 787 (1968); Federal Power Commission v. Texaco, Inc., 377 U.S. 33, 41 (1964); American Trucking Associations, Inc. v. United States, 344 U.S. 298, 311 (1953).

[180] Section 5 of the Act, 15 U.S.C. 78e.

[181] Section 6(a) of the Act, 15 U.S.C. 78f (a).

[182] Section 6(b) of the Act, 15 U.S.C. 78f(b). Under the rules each exchange is required to adopt, any willful violation of the Securities Exchange Act or the rules and regulations thereunder must be deemed to be conduct inconsistent with "just and equitable principles of trade."

[183] Section 6(d) of the Act, 15 U.S.C. 78f (d).

[184] Ibid.

[185] Section 6(f) of the Act, 15 U.S.C. 78f(f).

[186] Section 17(a) of the Act, 15 U.S.C. 78q (a). Registered broker-dealers who transact business other than on a national securities exchange also are required to maintain comprehensive accounts and records. Ibid.

[187] Ibid.

[188] Section 8(b) of the Act, 15 U.S.C. 78h(b).

[189] Section 8(c) of the Act, 15 U.S.C. 78h(c).

[190] Section 11 of the Act, 15 U.S.C. 78k.

[191] See p. 3908, supra.

[192] See S. 2693, 73d Cong., 2d Sess. section 10 (1934); H.R. 7852, 73d Cong., 2d Sess. section 10 (1934); Hearings on H.R. 7852 and H.R. 8720 before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 124 (1934) (testimony of Thomas Corcoran).

[193] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 15 (1934).

[194] Ibid.

[195] See 78 Cong. Rec. 7862 (1934) (statement of Rep. Lea).

[196] Securities Exchange Act section 19(b), 15 U.S.C. 78s(b).

[197] See p. 3907, supra.

[198] Thus residual authority was given with the intention of "letting the exchanges take the leadership with Government playing a residual role. Government would keep the shotgun, so to speak, behind the door, loaded, well oiled, cleaned, ready for use but with the hope it would never have to be used." Douglas, Democracy and Finance (Allen ed., 1940), p. 82.

[199] In a comparable context, the Supreme Court defined the scope of the term "including" in a statute which catalogued another administrative authority's statutory powers, and stated that to attribute a limiting function to the term would be "to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress such a caustic withdrawal of the authority which * * * it clearly has given."

Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 189 (1941). Accord, National Broadcasting Co. v. United States, 319 U.S. 190, 219–220 (1943).

[200] H.R. Rep. No. 1383, 73d Cong., 2d Sess. 15 (1934).

[201] 78 Cong. Rec. 8497 (1934). See also, Hearings Before the Senate Committee on Banking and Currency on S. Res. 84 (72d Cong.) and S. Res. 56 and S. Res. 97 (73d Cong.), 73d Cong., 2d Sess. (1934), pt. 15 at pp. 6583, 6723 (Testimony of Richard Whitney, President, New York Stock Exchange), 6963 (Testimony of Howard Butcher, Jr., Vice-President, Philadelphia Stock Exchange); Hearings on H.R. 7852 and H.R. 8720 Before the House of Representatives Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934), at pp. 160, 227; In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270, 294 (1941):

"It is clear from this language that Congress did not intend to empower this Commission to alter or supplement all rules of a national securities exchange. At the same time, it is plain that the language 'such matters as' and 'similar matters' calls for a broad construction of the section."

[202] Hearings on H.R. 7852 and H.R. 8720 Before the House of Representatives Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934), at p. 125.

[203] As we have noted, supra pp. 3903–3904, the issue of institutional membership is, in part, a function of fixed minimum commission rates.

[204] As we have stated on another occasion:

"The only qualification is that such 'matters' be similar to those specifically enumerated, that is, that they should be 'somewhat like' or have 'a general likeness' to them."

In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270, 297 (1941).

[205] Special Study, supra, n. 39, pt. 4, p. 696.

[206] See discussion, p. 3910, supra.

[207] Sec. 6(d) of the act, 15 U.S.C. 78f(d).

[208] See, e.g., Commission File No. S7–452, supra n. 16, written comments of PBW Stock Exchange, Inc. (Sept. 8, 1972); Channing Management Corp. (Oct. 5, 1972); American Life Convention-Life Insurance Association of America (Oct. 3, 1972).

[209] See cases cited n. 169, p. 3909, supra. Some of those commentators who have spoken out against the Commission's rules apparently have conceded that the Commission possesses the necessary authority by virtue of sec. 19(b). Thus, for example, the Antitrust Division of the Department of Justice, in rejecting the notion that any further expansion of our authority over exchange practices was necessary in light of sec. 19(b), stated before Congress:

"But there is an open-ended phrasing of sec. 19(b) granting the Commission power over exchange rules concerning matters that are 'similar' to those enumerated in the statute. Because of this open-ended phrasing and inherent relationship between many of the categories enumerated in 19(b) and membership, it would seem that the Commission does have sufficient power to deal with this problem."

Hearings Before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 92d Cong., 2d Sess., pt. 8, p. 4119 (1972). Since it is not entirely in accord with the rule we proposed for comment, however, the Antitrust Division has expressed some reservations concerning its earlier, expansive position regarding our authority. See Commission File No. S7-452, supra n. 16, written comments of the Antitrust Division of the Department of Justice (Oct. 3, 1972), pp. 29-32.

[210] See supra n. 208.

[211] Senate Hearings on S. 2693 at p. 6567.

[212] Securities and Exchange Commission Report on the Government of Securities Exchanges, H.R. Doc. No. 85, 74th Cong., 1st Sess. (1935).

[213] Id., at 2.

[214] Id., at 6.

[215] Ibid. As further evidence of the broad powers be believed the Securities Exchange Act conferred upon this agency with respect to exchange operations and practices, the Commission concluded in its report that no further steps needed to be taken by Congress at that time to insure more public representation on governing committees of exchanges. The reason for this conclusion was succinctly stated by the Commission:

"That act already provides a considerable degree of public supervision over exchange practices and exchange government."

[216] 15 U.S.C. 78s(a)(3).

[217] 15 U.S.C. 78w(a).

[218] 346 F. Supp. 217 (S.D. N.Y., 1972), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972).

[219] 346 F. Supp. at 228.

[220] The Court specifically mentioned Representative John Moss, Chairman of the House Subcommittee on Commerce and Finance, Senator Harrison Williams, Jr., Chairman of the Senate Subcommittee on Securities and Senator Philip A. Hart.

[221] 346 F. Supp. at 228. (Emphasis supplied.)

[222] S. Rep. No. 1455, 73d Cong., 2d Sess. 49 (1934).

[223] See Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at pp. 4, 5; 37 Fed. Reg. 16409, 16410, 16411 (Aug. 12, 1972).

[224] See, e.g., Commission File No. S7-452, supra n. 16, written comments of: Antitrust Division of the United States Department of Justice (Oct. 3, 1972); American Life Convention-Life Insurance Association of America (Oct. 3, 1972); PBW Stock Exchange, Inc. (Oct. 2, 1972).

[225] See discussion supra, pp. 3909-3911. Curiously, the same commentators who urge upon us the view that we lack authority to promulgate rules for the appropriate utilization of exchange membership pursuant to section 19(b) of the Securities Exchange Act also urge that section 19(b) requires us to hold an adversary hearing. If the former contention, concerning our lack of authority over the appropriate utilization of exchange membership under section 19(b) of the Act, were valid, any procedural requirements of that section would be inapplicable to these proceedings.

[226] If section 19(b) were read to require an adversary hearing under all circumstances, there would be no meaning to the alternative methods of implementing that section's provisions—rule making and adjudication. In light of the very meticulous consideration paid by Congress to the distinction between rules and regulations on the one hand, and orders on the other hand (see p. 3912, infra), we cannot concur in the suggestion that an adversary hearing is required.

[227] See supra, pp. 3906-3909.

[228] *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 352 (1963).

[229] See supra, p. 3906.

[230] See supra, pp. 3909-3911.

[231] Committee on Administrative Procedure, Report on Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess. 1 (1941).

[232] Id., at p. 3903.

[233] Ibid. Accord, Landis, The Administrative Process 46 (1938).

[234] Committee on Administrative Procedure, Report on Administrative Procedure in Government Agencies, supra n. 229, at p. 17.

[235] Id., at p. 19. As the Committee there noted:

"Specialization has further consequences in procedure. Because the members of an agency or its staff—like persons of similar experience in private affairs—approach problems of administration with a considerable background of knowledge and experience and with the equipment for investigation, they can accomplish much of the work of the agency without the necessity of informing themselves by the testimonial process."

[236] See p. 3902, supra.

[237] Landis, The Administrative Process 22-23 (1968).

[238] See p. 3912, supra.

[239] 78 Cong. Rec. 8091 (1934) (remarks of Representative Lea).

[240] During the consideration of the House bill, H.R. 9322, Representative Fish suggested the deletion of the Commission's rule making authority in what is now section 19(b), and proposed, instead, that the Commission be empowered to act solely by order. 78 Cong. Rec. 8087 (1934). The amendment was rejected at that time. Id., at p. 8093.

[241] The Senate passed bill, S. 3420 provided, That the Commission's authority under section 19(b) could be exercised solely by "order." Id., section 19(b). The Conference Committee, which generally adopted the Senate version of the section authorized the Commission to act both by rule making and by order. H.R. Rep. No. 1838, 73d Cong., 2d Sess. 37 (1934). The explanation for this dichotomy may be gleaned from the remarks of Representative Lea, quoted at p. 3912, supra.

[242] In 1941, representatives of the securities industry proposed legislation which, inter alia, would have deleted our authority to act by rules or regulations under Section 19(b). While we did not express any opposition to this proposed revision of the Act, *see* Securities and Exchange Commission, Report on Proposals for Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934, 77th Cong., 1st Sess. 39 (House Comm. Print, August 7, 1941), the Congress apparently did, since this proposal never was implemented.

[243] See p. 3912, supra. The unsuccessful attempts to delete our rule making authority from section 19(b) were predicated on the uniform belief that rule making afforded greater administrative flexibility and restricted, if not precluded, judicial review of agency action. See, e.g., 78 Cong. Rec. 8087, 8090-8092 (1934). As Representative Rayburn noted:

"If you are going to say that the Commission may do this by rules and regulations, that is one thing. If you are going to say that the Commission shall formulate rules and regulations and issue them in the form of orders, that is another thing; and every one of them could be tied up in the courts from 12 to 24 months and thus absolutely negative the very things we have done in the preceding forty-odd pages of this bill."

78 Cong. Rec. 8093 (1934). What is now section 25(a) of the Act provides the only statutory form for judicial review of Commission action; it is limited to "orders" entered in a "proceeding." Prior to the passage of the Securities Exchange Act, representatives of the New York Stock Exchange explicitly suggested that what is now Section 25(a) of the Act should be amended to permit judicial review of our rules and regulations, as well as orders. *See* Hearings on S. Res. 84 (72d Cong.), S. Res. 56 and S. Res. 97 (73d Cong.) Before the Senate Committee on Banking and Currency, 72d Cong., 2d Sess. and 73d Cong., 1st and 2d Sess., pt. 16, pp. 7569-7572 (1934). Ferdinand Pecora, counsel for the subcommittee and a draftsman of the legislation, expressed the views ultimately adopted by the Committee:

"Mr. Pecora (continuing). You will put the * * * Commission, then, in the position of making rules and regulations for which a court may provide a substitute * * *

* * * * *

"Mr. Redmond (Roland L. Redmond was attorney for the New York Stock Exchange (Id. at 7539)). But was not this section intended to allow citizens who were aggrieved by the action of the Commission—

"Mr. Pecora. By an order, which is different from a rule or regulation."

Id., at pp. 7569-7570 (emphasis supplied).

[244] 5 U.S.C. 551(4) defines the term "rule" as:

"the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing * * *."

"Rule making" is defined by the Act as the "agency process for formulating, amending, or repealing a rule * * *." 5 U.S.C. 551(5). An "order," under the Administrative Procedure Act, as codified,

"means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing * * *."

5 U.S.C. 551(6).

Finally, 5 U.S.C. 551(7) defines "adjudication" to mean the "agency process for the formulation of an order * * *."

[245] Attorney General, Manual on the Administrative Procedure Act (1947).

[246] Id., at pp. 14-15. Accord, Columbia Broadcasting System, Inc. v. United States, 316 U.S. 407 (1942); American Airlines, Inc. v. Civil Aeronautics Board, 359 F. 2d 624, 629-630 (C.A. D.C.) (en banc), certiorari denied, 385 U.S. 843 (1966). In Columbia Broadcasting, supra, the Supreme Court stated (316 U.S. at p. 418):

Unlike an administrative order or a court judgment adjudicating the rights of individuals, which is binding only on the parties to the particular proceeding, a valid exercise of the rule making power is addressed to and sets a standard of conduct for all to whom its terms apply. It operates as such in advance of the imposition of sanctions upon any particular individual.

[247] See Securities Exchange Act Release No. 9716 (Aug. 3, 1972), at p. 5; 37 FR 16409, 16411 (Aug. 12, 1972), proposing Securities Exchange Act Rule 19b-2, cited at supra, p. 70.

[248] See discussion infra, pp. 3924-3925.

[249] See In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270 (1941).

[250] See Securities Exchange Act Release No. 7631 (Oct. 20, 1966), announcing the adoption of Securities Exchange Act Rule 19b-1, setting forth minimum capital requirements for nonmember exchange market makers.

Very early in our administration of the Securities Exchange Act, we recognized that the matters enumerated in section 19(b) "affect the exchanges as a group and are not confined to one exchange alone." In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270, 294 (1941). Accord, In the Matter of the Torrington Co., 19 S.E.C. 39, 53 (1945).

[251] See Policy Statement, *supra* n. 1, at pp. 10–12. As noted by the House Study, *supra* n. 4,

"The keynote in the development of a central market system should be to achieve the highest measure of uniformity in rules consistent with the greatest amount of investor protection * * *. [C]omplete uniformity is not desirable if such uniformity is used as a contrivance to force upon some exchanges regulation which would have the effect of perpetuating the existing competitive advantages of various exchanges to the detriment of other exchanges and inhibiting the growth of regional exchanges. Determining the precise balance between uniformity and diversity in rules is a task which is best left to the expertise of the Securities and Exchange Commission, under appropriate guidelines established by the Congress. At a very minimum, there should be complete uniformity in standards for reporting of transactions and in prohibitions against manipulation, 'painting the tape' and other undesirable trading activities. The rules requiring that public orders receive priority in trades should also be uniform. Similarly, rules governing membership on exchanges * * * should be uniform."

Id., at p. 129 (emphasis supplied).

[252] See, e.g., Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards 145 (1962); Redford, National Regulatory Commissions: Need for a New Look 9 (1959); Landis, Report on Regulatory Agencies to the President-Elect 22–24 (1960); Task Force Report on Regulatory Commissions 40–42 (1949); Hector, Problems of the CAB and the Independent Regulatory Commissions, 69 Yale L.J. 931 (1960).

[253] See, e.g., n. 222, supra.

[254] Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 202 (1947) (emphasis in original). See also, Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards 145 (1962); Friendly, A Look at the Federal Administrative Agencies, 60 Colum. L. Rev. 429, 437 (1960). In Chenery, supra, the Court did, however, make clear that

"the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency."

332 U.S. at p. 203.

[255] See former section 4(b) of the Administrative Procedure Act, now codified as 5 U.S.C. 553(b).

[256] See 5 U.S.C. 554.

[257] "The test of the judicial process, traditionally, is not the fair disposition of the controversy; it is the fair disposition of the controversy upon the record as made by the parties * * *. [For the administrative] process to be successful in a particular field, it is imperative that controversies be decided as "rightly" as possible, independently of the formal record the parties themselves produce. The ultimate test of the administrative is the policy that it formulates; not the fairness as between the parties of the disposition of a controversy on a record of their own making."

Landis, The Administrative Process 38–39 (1938).

[258] See, e.g., Senate Hearings on Institutional Membership, supra n. 110; 1972 House Hearings, supra n. 110; 1972 House Hearings, supra n. 110; Hearings before the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, United States Senate, 92d Cong., 1st Sess. (1971).

[259] Securities Exchange Act Release No. 9716 (Aug. 3, 1972) at p. 2; 37 FR 16409, 16410 (Aug. 12, 1972). See also, Release No. 9716, supra, at p. 5; 37 FR at 16411.

[260] See cases cited at n. 269, infra; Committee on Administrative Procedure, Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess. 105–111 (1941); see generally, 1 Davis, Administrative Law Treatise § 6.06 (1958).

[261] Adjudicatory or trial-type proceedings also may isolate the agency from its staff. See former Section 5 of the Administrative Procedure Act, now codified as 5 U.S.C. 554, especially subsections (c) and (d). The agency is thereby prevented from fully utilizing its expertise, for an agency's expertise resides in large part in its staff. In a rulemaking proceeding, the separation-of-functions provisions do not apply, there being no adversary proceeding, and the agency may draw freely on the knowledge and experience of its staff. It seems clear that an agency's ability to formulate substantive standards of conduct must be impaired when full access to its own staff is denied.

[262] Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 202 (1947); Friendly, A Look at the Federal Administrative Agencies, 60 Colum. L. Rev. 429, 436–437 (1960); Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards 142–147 (1962); Bernstein, Regulating Business by Independent Commission 179–182 (1955).

[263] See p. 3914 n. 269, infra.

[264] See, e.g., Commission File No. S7–452, supra, n. 16, written comments of: PBW Stock Exchange, Inc. (Oct. 2, 1972); American Life Convention-Life Insurance Association of America (Oct. 3, 1972); Channing Management Corp. (Oct. 5, 1972).

[265] Compare Philadelphia Co. v. Securities and Exchange Commission, 175 F. 2d 808, 816–817 (C.A. D.C.), vacated as moot, 337 U.S. 901 (1949); Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226 (1908); Bi-Metallic Investment Co. v. State Board of Equalization of Colorado, 239 U.S. 441, 445 (1915); Bowles v. Willingham, 321 U.S. 503, 519–520 (1944).

[266] See. n. 264, supra.

[267] See p. 3904, supra.

[268] We reject the view expressed by some commentators, see, e.g., n. 264, supra, that we may not rely upon earlier stages of our hearings. Those hearings provided the statutory basis for our request to the exchanges that they adopt a rule similar to Securities Exchange Act rule 19b–2. To the extent particular facts may, through the lapse of time, have changed, there was adequate opportunity to discuss the impact of these changes at each stage of our proceedings. But, our proceeding involved policymaking for the future—policies which are not necessarily dependent solely on particular facts, but on the status of the industry, likely trends, and our view of the appropriate structure to which the industry should conform in the future; we do not believe our determination not to continue cross-examination procedures after details of industry practices had been explored fully was significant.

[269] See, e.g., United States v. Allegheny-Ludlum Steel Corp., 406 U.S. 742, 757–758 (1972), where the Court stated, in connection with the Esch Car Service Act, 49 U.S.C. 1(14)(a),

"The Esch Act, authorizing the Commission 'after hearing, on complaint or upon its own initiative without complaint, [to] establish reasonable rules, regulations, and practices with respect to car service * * *.' 49 U.S.C. 1(14)(a), does not require that such rules 'be made on the record.' 5 U.S.C. 553. That distinction is determinative for this case. 'A good deal of significance lies in the fact that some statutes do expressly require determinations on the record.' 2 K. Davis, Administrative Law Treatise, § 13.08 p. 225 (1958). Sections 556 and 557 need be applied 'only where the agency statute, in addition to providing a hearing, prescribes explicitly that it be "on the record." Siegel v. Atomic Energy Commission, 130 U.S. App. D.C. 307, 400 F. 2d 778, 785 (1968); Joseph E. Seagram & Sons Inc. v. Dillon, 120 U.S. App. D.C. 113, 344 F. 2d 497, 500 n. 9 (1965). Cf. First National Bank v. First Federal Savings & Loan Assn., 96 U.S. App. D.C. 194, 225 F. 2d 33 (1955). We do not suggest that only the precise words 'on the record' in the applicable statute will suffice to make sections 556 and 557 applicable to rulemaking proceedings, but we do hold that the language of the Esch Car Service Act is insufficient to invoke these sections.

"Because the proceedings under review were an exercise of legislative rule making power rather than adjudicatory hearings * * * and because 49 U.S.C. 1(14)(a) does not require a determination 'on the record,' the provisions of 5 U.S.C. sections 556, 557 were inapplicable.

"This proceeding, therefore, was governed by the provisions of 5 U.S.C. 553 of the Administrative Procedure Act, requiring basically that notice of proposed rule making shall be published in the FEDERAL REGISTER, that after notice the agency give interested persons an opportunity to participate in the rule making through appropriate submissions, and that after consideration of the record so made the agency shal incorporate in the rules adopted a concise general statement of their basis and purpose. The 'Findings' and 'Conclusions' embodies in the Commission's report fully comply with these requirements, and nothing more was required by the Administrative Procedure Act" (citations and footnote deleted).

In view of the substantial legislative history indicating that the Commission was authorized to act by rule or regulation to avoid the substantial evidence review that was expected for agency orders (see p. 3912, supra), we do not believe we were required to hold an adversary hearing on our rule proposal.

[270] See, n. 264, supra.

[271] See p. 3906, supra.

[272] See Securities Exchange Act Release No. 9808 (Oct 5, 1972) at p. 2; 37 FR 21447 (Oct. 11, 1972).

[273] See, e.g., Commission File No. S7–452 supra n. 16, Transcript of Hearings, pp. 18, 26, 39–64, 111, 133, and 157.

[274] See, e.g., Id., letters received from: American Insurance Association of America (Dec. 11, 1972); American Life Convention—Life Insurance Association of America (Dec. 8, 1972); State Treasurer, State of Connecticut (Dec. 15, 1972); Investors Diversified Services, Inc. (Dec. 12, 1972).

[275] See 5 U.S.C. 556(d); Long Island Railroad Co. v. United States, 318 F. Supp. 490, 499 (E.D. N.Y., 1970).

[276] See 5 U.S.C. 553(c):

"After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."

[277] See, Commission File No. S7–452, supra n. 16, New York Stock Exchange, Exhibit 1.

[278] In 1970, there were at least 55 "institutional memberships" on the regional exchanges. By the end of 1972 that figure had grown to nearly 80. For a description of the manner in which a pure "recapture" vehicle might operate, see Senate Hearings on Institutional Membership, supra n. 110, pt. I, at pp. 100–104.

[229] See, generally, Institutional Investor Study, supra n. 4, pt. 4, at pp. 2296–2300.

[230] The NYSE rule stated: "The primary purpose of every member organization, and any parent of any member corporation, shall be the transaction of business as a broker or dealer in securities." New York Stock Exchange Rule 318. 2 CCH, New York Stock Exchange Guide para. 2318 at pp. 3075–77. The business of being a broker or dealer was defined further:

"For the purposes of this rule, a member organization's or its parent's activities shall be considered to be the transaction of business as a broker or dealer in securities when such member organization including its approved corporate affiliates and subsidiaries, or its parents, as the case may be, acts as a floor trader, specialist, so-called $2 broker, odd-lot broker, arbitrageur, or holds itself out to, and transacts business generally with, the public as a broker or dealer in securities * * * if its gross income (including, in the case of a member organization, the gross income of its corporate affiliates and subsidiaries controlled by the member organization) from activities of the type described in the preceding sentence and from interest charges imposed with respect to debit balances in customers' accounts is at least 50 percent of its total gross income (including, in the case of a member organization, the gross income of its corporate affiliates and subsidiaries controlled by the member organization)."

New York Stock Exchange rule 318.12, 2 CCH, New York Stock Exchange Guide para. 2318 at p. 3075. The Commission did not object in principle to the "primary purpose requirement," although the Commission gave notice that it intended to review both the appropriateness of the requirement and the suggested standards for its determination. Securities Exchange Act Release No. 8849 (Mar. 26, 1970).

[231] For example, the president of the New York Stock Exchange stated: "With public ownership, the possibility will exist that persons or parties who are outside the control of the exchange may own voting securities of a member corporation and, as a group or individually may control and dominate the affairs of the member corporation. From a self-regulatory standpoint, this situation cannot be solved by requiring the member organization to disclose the existence of the parent." Letter, dated Oct. 31, 1969, from Robert W. Haack, president, New York Stock Exchange, to Irving M. Pollack, Director, Division of Trading and Markets, Securities and Exchange Commission. See also, Commission File No. 4–147, supra n. 84, transcript at pp. 463–464, 1106.

[232] For a discussion of the growth of institutional membership from 1965 to 1970, see, Institutional Investor Study, supra n. 4, pt. 4, at 2296–2310.

[233] PBW Stock Exchange Const., art. XIV, Sec. 2, CCH, PBW Stock Exchange Guide para. 1327, at p. 1093. The PBW Stock Exchange does, however, expressly prohibit membership for banks, their subsidiaries, and investment trusts. PBW Stock Exchange Const., art. XIV, sec. 3, CCH, PBW Stock Exchange Guide para. 1328, at p. 1093. But see Institutional Investor Study, supra n. 4, pt. 4, at p. 2308 n. 123.

[234] Pacific Coast Stock Exchange Const., rule IX, section 5(a) (6), CCH, Pacific Coast Stock Exchange Guide Para. 4750 at pp. 3111–3112. Developments and changes in the PCSE rules since 1965 are discussed in the Institutional Investor Study, supra n. 4, pt. 4, at pp. 2308–2310.

[235] Pacific Coast Stock Exchange Const., rule IX, section 5(a) (6). CCH, Pacific Coast Stock Exchange Guide Para. 4750 at pp. 3111–3112.

[236] Ibid.

[237] Boston Stock Exchange Rules, ch. XXV, section 1(a), CCH, Boston Stock Exchange Guide Para. 2225, at p. 2231.

[238] Letter, dated January 7, 1971, from James Dowd, President, Boston Stock Exchange, to Kenneth Rosenblum, Branch Chief, Office of Exchange Regulation, Division of Trading and Markets, Securities and Exchange Commission.

[239] Midwest Stock Exchange Const. Art. I, rule 1(c), CCH, Midwest Stock Exchange Guide Para. 2021, at pp. 2021–2022.

[240] See, Policy Statement, supra n. 1, at pp. 21–22.

[241] See, e.g., New York Stock Exchange Const., Art. 1, section 3(d); Art. IX, sections 7(b) (1), 7(b) (3), 7(c); Art. XIV, section 9, 2 CCH, New York Stock Exchange Guide, para 1003, at pp. 1051–52; para. 1407, at pp. 1074–75; para. 1659, at p. 1090.

[242] See infra at pp. 3925–3926. It is important to note here only that an exchange is an essential resource for those engaged in the business of executing securities transactions for public customers. "It is a basic rule of antitrust law that those who jointly control an essential resource must grant access to it, on equal and non-discriminatory terms, to all those in the trade." See, Commission File No. 4–147, supra n. 84, written comment of the Antitrust Division, U.S. Department of Justice, "Antitrust Rules Governing Access to an Essential Facility," appendix B, at p. B–1 and authorities cited therein. "The 'bottleneck' principle is clearly applicable to rules governing access by broker-dealers to the dominant exchange in the country." This is not to say that an exchange may not limit the number of its memberships, see Silver v. New York Stock Exchange, 373 U.S. 341, 350 (1962), just that entrance requirements must be fair and not discriminatory.

[243] See, infra., pp. 3915–3916, 3918–3919. Some commentators, particularly investment company managers, have asserted that the Commission has reversed its direction on the issue of membership for "recapture" purposes. See e.g., Commission File No. S7–452, supra n. 16, written comment of Keystone Custodian Funds, Inc. (Sept. 28, 1972), at pp. 1–4. The Commission has consistently taken the position that a mutual fund adviser has no duty to form or acquire a broker-dealer affiliate for the purpose of becoming a member of a stock exchange to execute the fund's portfolio transactions or to serve as vehicle through which brokerage commissions generated by the fund's portfolio transaction may be recaptured. See, e.g., Securities Exchange Act Release No. 8746 (Nov. 10, 1969); Memorandum of the Securities and Exchange Commission Objecting to Proposed Settlement in Kurach v. Weissman, 67 Civ. 9 (S.D.N.Y., 1969), at p. 13. Cf., Moses v. Burgin, 445 F. 2d 369, 374–375 (C.A. 1), certiorari denied sub nom Johnson v. Moses, 404 U.S. 994 (1971). When an investment manager or the fund's board of directors, however, determines that it is in the best interests of the fund to form such an affiliate, the Commission has taken the position that, except where the affiliate performs bona fide brokerage functions for the fund, any recaptured commissions or reciprocal business traceable to the fund's portfolio transactions must be used to benefit directly the fund's shareholders. See, Provident Management Corp., Securities Exchange Act Release No. 5115 (Dec. 1, 1970); Memorandum of the Securities and Exchange Commission as Amicus Curiae in Opposition to the Proposed Settlement in Gross v. Moses, 67 Civ. 4186 (S.D.N.Y., 1971), at p. 13 (as modified). It is difficult to see any inconsistency between the above position and Rule 19b–2, particularly when it is noted that the above position dealt with the conduct of fiduciaries in a given set of circumstances, cf., Securities Exchange Act Release No. 8239 (Jan. 26, 1969), at p. 1, whereas Rule 19b–2 deals with the proper membership structure of an emerging central market system. Nonetheless, even if the Commission were to have reversed past policy, it is well settled that "administrative authorities must be permitted, consistently with the obligation of due process, to adapt their rules and policies to the demands of changing circumstances." Permian Basin Area Rate Cases, 390 U.S. 747, 784 (1968). Cf. American Trucking Association, Inc. v. United States, 344 U.S. 298, 313–314 (1953); Federal Communications Commission v. WOKO, Inc. 329 U.S. 223, 228 (1946); Shawmut Association v. Securities and Exchange Commission, 146 F.2d 791, 796–797 (C.A. 1, 1945).

[244] "[(A)] seat on an exchange should not represent a monopoly on its use or economic advantages to exchange members which are disproportionate to the value of the functions they perform for others." House Study, supra n. 4, at p. 123.

[245] See infra. pp. 3920–3924.

[246] Institutional Investor Study, supra n. 4, pt. 8, at pp. XX–XXI.

[247] Id., at pp. VII, XX–XXI.

[248] See Policy Statement, supra n. 1. See also, 1972 House Hearings, supra n. 110, pt. 6, at pp. 2946–2947, 4294–4295, and Hearings on S. 3169 before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., pt. 1, at pp. 7–8 (1972).

[249] Institutional volume as a percent of total public volume had increased from 25.4 percent in March 1956 to 42.9 percent in 1966.

[250] Institutional Investor Study, supra n. 4, pt. 4, at p. 2172.

[251] A "giveup" was a payment, by the broker executing a securities transaction to other brokers and dealers in securities, of a part of the minimum commission the executing broker is required to charge his customers by exchange rule. Under the rules of the stock exchanges as they existed in early 1968, the payment could have been made on the executing broker's own initiative and for his own purposes, or it might have been directed by the customer or its institutional manager. The recipient of a "give-up" check might have had nothing whatsoever to do with the transaction for which the commission was charged and, in fact, may not even have known of the transaction or where or when it was executed. Giveups were widely used in connection with mutual fund portfolio transactions: Managers of mutual funds directed giveups, for the most part to brokers and dealers in securities who had sold fund shares, in order to motivate, or reward, such sales efforts.

[252] Securities Exchange Act Release No. 8323 (Jan. 23, 1968). The release also announced proposals submitted to the Commission by the New York Stock Exchange which contemplated (1) a volume discount; (2) access to the exchange market by qualified nonmember broker-dealers; (3) recognition of limited customer-directed give-ups to both members and nonmembers of the NYSE; (4) a prohibition of institutional recapture arrangements; and (5) a requirement that regional exchanges impose similar restrictions.

[253] Securities Exchange Act Release No. 8324 (May 23, 1968). That release also announced that the Commission had sent a letter to the New York Stock Exchange pursuant to sec. 19(b) of the Securities Exchange Act requesting it to adopt a revised rate schedule which would provide for a volume discount on round-lots above 400 shares or competitive commission rates for orders involving more than $50,000. Similar letters were also written to the other registered exchanges requesting that the same changes be considered.

[304] For a discussion of give-up practices on the various national exchanges, see Commission File No. 4-144, supra n. 65, transcript at pp. 4900-4935, 4990-4998 for New York Stock Exchange members; pp. 487, 574, 630, 899, 1166 for American Stock Exchange members; pp. 643, 867-903 for Boston Stock Exchange members; 933-1015, 1019, 1030, 1033-36 for PBW Stock Exchange members; 543, 916-962, 1181 for Midwest Stock Exchange and Detroit Stock Exchange members; and 289-295, 355, 482-484 for Pacific Coast Stock Exchange members. Data collected on the amounts given up and the extent of these practices may be found in Institutional Investor Study, supra n. 4, pt. 4, at pp. 2182-2298; give-up rules and practices in effect on the various exchanges are also discussed in Securities and Exchange Commission, Report on the Public Policy Implications of Investment Company Growth, H. Rep. No. 2337, 89th Cong., 2d Sess., at pp. 167-181 (1966); 2 Special Study supra, n. 39, at pp. 859, 864.

[305] See, e.g., Commission File No. 4-144, supra n. 65, transcript at pp. 1733-1738, 1850-1856, 2280-2282.

[306] See, e.g., id., transcript at pp. 167-192, 274, 283-286, 696.

[307] The Commission found that members were offering direct wire connections to institutions, id., at pp. 80, 112-113; portfolio valuations twice daily, id. at pp. 86-87; special services, id., at pp. 113-114; preparation and distribution of advertising literature, id., at pp. 106-109; compensating balances at banks, id., at pp. 90, 109-110; and purchasing insurance products from active insurance company customers, id., at p. 92. It is possible, of course, that the service competition produced a distension of product parameters offered by the brokerage firms, i.e., services which might not have been desirable if institutional size orders had been negotiable. See Baxter, NYSE Fixed Commission Rates: A Private Cartel Goes Public, 22 Stan. L. Rev. 676, 677-78 (1970). For a general description of the business relationships between institutions and broker-dealers, see Institutional Investor Study, supra n. 4, pt. 4, at pp. 2263-2265, 2273-2274, 2277-2286.

[308] Securities Exchange Act Release No. 8324 (May 28, 1968).

[309] Securities Exchange Act Release No. 8399 (Sept. 4, 1968).

[310] Ibid. The hearings were to continue, however, focusing in the main on such issues as exchange membership for financial institutions, restrictions on access by exchange members to the third market and competition among exchanges and between exchanges and other markets. See Securities Exchange Act Release No. 8432 (Oct. 21, 1968) and Securities Exchange Act Release No. 8791 (Dec. 31, 1969).

[311] Institutional Investor Study, supra n. 4, pt. 4, at p. 2200.

[312] For example, under the rate prior to Dec. 5, 1968, an order for 300,000 shares of a $40 stock would have involved a minimum commission of $117,000. After Dec. 5, 1968, the amount over $100,000 was negotiable.

[313] For a graphic description of the arrangements which began after the give-up prohibition, see Institutional Investor Study, supra n. 4, pt. 4 at pp. 2205-2206.

[314] Ibid.

[315] Securities Exchange Act Release No. 8837 (Mar. 5, 1970) and Securities Exchange Act Release No. 8920 (June 30, 1970).

[316] The first schedule prepared in Feb. 1970 for the New York Stock Exchange recommended cost-related changes, which would have raised fees on some smaller orders over 100 percent while reducing rates on orders over 300 shares by 38 percent. The NYSE, in reconsidering this schedule, made a policy judgment that increases on small orders should be more limited regardless of detailed cost analysis. See, Securities Exchange Act Release No. 8914 (June 24, 1970). The New York Stock Exchange submitted a revised schedule which the Commission published for public comment, Securities Exchange Act Release No. 8920 (June 30, 1970), and which was the subject of our ongoing hearings, Securities Exchange Act Release No. 8924 (July 2, 1970).

[317] Securities Exchange Act Release No. 9007 (Oct. 22, 1970). The Commission's nonobjection to the new schedule was predicated in part on the need for member firms adequately to serve small investors and was conditioned on the understanding that no member firm which traditionally had accepted small customer accounts would impose or continue any limitation on the size of such customers' orders or accounts and that, in connection with such business, the firm would not charge fees in excess of the proposed rates. The Commission also stated its view that the proposed commission rate increases on round-lot orders involving from 100 to 400 shares were unreasonable. In any event, the Commission requested the NYSE to submit a new rate schedule based on a percentage scale of the money involved in an order by June 30, 1971.

[318] Securities Exchange Act Release No. 9079 (Feb. 11, 1971).

[319] Securities Exchange Act Release No. 9105 (Mar. 11, 1972) and Securities Exchange Act Release No. 9132 (Apr. 1, 1972).

[320] Securities Industry Study, Hearings before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 1st sess., pt. I, at pp. 142 (1971) (hereinafter cited as "1971 Senate Hearings").

[321] See, supra n. 317.

[322] Securities Exchange Act Release No. 9234 (June 28, 1971).

[323] Securities Exchange Act Release No. 9351 (Sept. 24, 1971).

[324] See, Policy Statement supra n. 1, at p. 16.

[325] Statement of William J. Casey, Chairman of the Securities and Exchange Commission, in Hearings on S. 3169 before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., 8 (1972).

[326] See New York Stock Exchange Analysis of Negotiated Rates, 2d quarter 1972 (Nov. 30, 1972).

[327] This expectation is based upon the experience after the breakpoint was reduced from $500,000 to $300,000. Until then, the negotiated rates on the total order involving over $500,000 had resulted in an average 30-percent discount from the fixed rate schedule in effect between Dec. 1968 and Mar. 1972. After the breakpoint was reduced to $300,000 the average discount on the total order then fell to about 23 percent from the former fixed rate on all orders involving over $300,000.

[328] The effect of the volume discount.

[329] The effect of competitive rates on the portion of an order over $500,000 assuming a 50 percent discount.

[330] The effect of reducing the competitive rate breakpoint to $300,000 assuming a 40 percent discount.

[331] Hearings on S. 3169 before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., 16, 19 (1972).

[332] As successively lower breakpoints are reached the impact in revenue loss becomes more widespread. While competitive rates on orders involving more than $500,000 primarily affected "institutional brokers," further reductions tend ot have an impact on medium order size and retail firms as well. See id., at pp. 10-11, Exhibits 1A and 1B at p. 22.

[333] Securities Exchange Act Release No. 9856 (No. 10, 1972).

[334] Securities Exchange Act Release No. 9891 (Dec. 5, 1972).

The incremental costs of complying with the segregation and reserve requirements, along with their effect on broker-dealers that have traditionally used customer funds in their proprietary activities, as well as the costs of complying with the proposed net capital requirements, cannot be fully evaluated without some experience with the operation of those rules.

The Commission has recognized the need for carefully monitoring the impact of these rules:

"Inasmuch as * * * [Rule 15c3-3] is comprehensive, touching upon many phases of the broker-dealer's business, its uniformity of application may lead in certain instances to significant impact upon some broker-dealers * * *.

"The operations of Rule 15c3-3 will be carefully monitored by the Commission to determine whether there will be a need in the public interest to tighten or relax any of the restraints and time frames embodied in the Rule."

Securities Exchange Act Release No. 9856 (Nov. 10, 1972), at p. 7.

[335] See, Policy Statement, supra n. 1, at pp. 18-19.

[336] Investment Company Act Release No. 7534 (Nov. 30, 1972).

[337] See, House Study, supra n. 4, at pp. 143-144; Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., Securities Industry Study Report 60 (Comm. Print, 1972); Commission File No. 4-147, supra n. 84, written comments of the Antitrust Division, U.S. Department of Justice, (Dec. 1, 1972) at pp. 10-11.

[338] The brokerage subsidiary of an institution has at least three ways it can effectively achieve competitive rates for the institution: (1) Execute as many orders as possible on the exchanges of which it is a member; (2) if the broker representing the other side of a transactions is a dual member, convince that broker to "transport" the trade to the regional exchange to meet with the institution's brokerage subsidiary; and (3) engage in arrangements with members of primary exchanges providing for the receipt of reciprocal commission business on unrelated transactions (often referred to as "regular-way reciprocity.") For a description of regular-way reciprocity, see 2 Special Study, supra n. 39 at pp. 302-311; Commission File No. 4-144, supra n. 65, Transcript at pp. 4910-4914.

[339] The Commission finds the general expression of its mandate to pursue this course in the following language:

"The bill (Securities Exchange Act) proceeds on the theory that the exchanges are public institutions which the public is invited to use for the purchase and sale of securities listed thereon, and are not private clubs to be conducted only in accordance with the interests of their members."

H.R. Rep. No. 1383, 73d Cong., 2d Sess., 15 (1934).

"[T]ransactions in securities as commonly conducted on securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of matters related thereto, including transactions by officers, directors, and principal security holders to require appropriate reports, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, * * * and to insure the maintenance of fair and honest markets in such transactions."

The Securities Exchange Act of 1934, sec. 2, 15 U.S.C. 78b. The rules of exchanges must be "just and adequate to insure fair dealing and to protect investors * * *" Id., sec. 6(d), 15 U.S.C. 78f(d). The Commission is empowered to alter rules of exchanges after appropriate procedures if such changes are "necessary or appropriate for the protection

of investors or to insure fair dealing in securities traded in upon such exchange or to insure fair administration of such exchange * * *" Id., sec. 19(b), 15 U.S.C. 78s(b). Throughout the Act the Commission is charged with insuring "just and equitable principles of trade" and taking whatever action is "necessary or appropriate in the public interest or for the protection of investors."

[240] S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934). A description of some of the particular arrangements uncovered by the Senate Committee are discussed at *id.*, pp. 3909–3911.

[241] 15 U.S.C. 78p. This particular section of the Securities Exchange Act has been praised as follows:

"In retrospect, section 16 seems have been in fact not only a valid but also a wise exercise of Congress' powers. The system of statutory safeguards established in 1934 has proved its effectiveness in safeguarding the integrity of the public securities markets, in preventing abuse of inside information in those markets, and in insuring full disclosure of material information. It is to be expected that it will continue to be an important and secure link in the armor protecting the individual investor."

Cook & Feldman, Insider Trading Under the Securities Exchange Act, 66 Harv. L. Rev. 385, 641 (1953).

[242] See, Hearings on S. Res. 84 (72d Cong.), S. Res. 56 and S. Res. 97 (73d Cong.) before the Senate Committee on Banking and Currency, 72d Cong. 2d Sess. and 73d Cong., 1st and 2d Sess., pt. 15, p. 6557 (1934); Western Auto Supply Co. v. Gamble-Skogmo, Inc., 348 F. 2d 736 (C.A. 8, 1965), certiorari denied, 382 U.S. 987 (1966).

[243] 2 Special Study, supra n. 39, at 239–240. Similarly, the Commission has stated that "the maintenance of fair and honest markets in securities and the prevention of inequitable and unfair practices in such markets are primary objectives, of the federal securities laws." In re Investors Management Co., Inc., Securities Exchange Act Release No. 9267 (July 29, 1971), at p. 6.

[244] See generally, A Bromberg, Securities Law Fraud, (1971).

[245] 17 CFR 240. 10b–5.

[246] In re Investors Management Co., Inc., Securities Exchange Act Release No. 9267 (July 29, 1971); In re Merrill Lynch, Pierce, Fenner & Smith, Inc., Securities Exchange Act Release No. 8459 (Nov. 25, 1968).

[247] Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F. 2d 833, 858 (C.A. 2, 1968) (en banc), certiorari denied sub nom., Coates v. Securities and Exchange Commission, 394 U.S. 976 (1969).

[248] 17 CFR 240.10b–4.

[249] 17 CFR 240.10b–13.

[250] This practice has been explained as follows:

"At the hearings, the committee was informed of a practice known as 'short tendering,' in which brokers tender securities they do not own. Tender offers commonly provide that the stock certificates need not be deposited if a bank or a member firm of a stock exchange guarantees that the certificates will be delivered on demand or at a specified time if they are accepted. This procedure was originally introduced to permit acceptance on behalf of shareholders who were out of town or otherwise not in a position to deposit their certificates. It has, however, resulted in abuses. For example, if a broker estimates that only half of the shares tendered will be accepted, on a pro rata basis, he can't tender without depositing twice as many shares as he owns. As a result, all of the shares which he actually owns will be accepted, and the number of shares purchased from other investors will be correspondingly reduced."

S. Rep. No. 550, 90th Cong., 1st Sess., 5 (1967).

[251] Securities Exchange Act Release No. 8712 (Oct. 8, 1967). Similarly, the purpose of subsec. (d)(7) of sec. 14 of the Securities Exchange Act "is to assure fair treatment of those persons who tender their shares at the beginning of the tender period, and to assure equality of treatment among all shareholders who tender their shares. H.R. Rep. No. 1711, 90th Cong., 2d Sess., 11 (1968).

On December 27, 1972, the Commission proposed an amendment to Rule 10b–13. Securities Exchange Act Release No. 9920. The Commission indicated in its release announcing the proposed change that the payment of a soliciting dealer's fee by the tender offeror to a tendering shareholder or its affiliate would be compensation paid otherwise than pursuant to the terms of such offer and would thus violate the terms of the rule. This proposal is based on the proposition that no shareholder, by virtue of his economic power or special position, should be able to receive compensation beyond the tendering price offered to shareholders generally.

[252] Investment Co. Act Release No. 7851 (Dec. 26, 1972).

[253] 15 U.S.C. 80b–1 et. seq.

[254] Rule 204.2(a)(12), 17 CFR 275.204–2(a)(12).

[255] See, Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963); Securities Exchange Act Litigation Release Nos. 5485 (July 24, 1972) and 5645 (Nov. 22, 1972).

[256] The Congressional concern with the trading practices of all members apparently was so great that the original version of the Securities Exchange Act would have prohibited virtually all trading by members of exchanges and contemplated exchange markets made up exclusively of brokers. See, H.R. 7852, Sec. 10, 78 Cong. Rec. 2378 (Feb. 10, 1934). Instead, Congress vested broad authority in the Commission through Sec. 11 to regulate trading of members. See supra pp. 3906–3912.

[257] See New York Stock Exchange Const., Art. XV, sec. 2(a)(1). 2 CCH, New York Stock Exchange Guide, Para. 1702(a)(1) at p. 1101.

[258] See id., sec. 2(b). 2 CCH, New York Stock Exchange Guide, Para. 1702(b) at p. 1105.

[259] See id., sec. 4. 2 CCH, New York Stock Exchange Guide Para. 1704 at p. 1110.

[260] Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker, 16–17 (1936). As stated in a report prepared for the Commission by its staff, "Floor traders 'beyond a doubt' enjoy 'formidable' trading advantages over the general public." Securities and Exchange Commission Division of Trading and Exchanges, Report on Floor Trading to the Commission 42 (G.P.O. ed., January 15, 1945).

[261] 2 Special Study, supra n. 39, at p. 210.

[262] Id., at p. 211.

[263] Id., at p. 212.

[264] Securities Exchange Act Release No. 7290 (Apr. 9, 1964).

[265] Id., at p. 5.

[266] Id., at p. 5. The release went on to state:

"There is inherent in floor trading an opportunity and an incentive to engage in a course of conduct which is inconsistent with the statutory purposes and scheme. For example, a floor trader, familiar with the fact that certain commission brokers handle a large number of orders and do not execute them all at once, can anticipate from their appearance in the market that further substantial buying is forthcoming; and, it is extremely doubtful whether trading on this information, which is unavailable to the investing public, is consistent with 'fair dealing' or with the antifraud provisions of rule 10b–5 under the Exchange Act.

"Where floor traders rush to a security in which buying exists or is anticipated, and, by a succession of purchases at rising prices, interspersed with those of the public, arouse and capitalize upon public reaction to the activity shown on the tape, the consequences are hardly distinguishable from those of a manipulation, whether or not a violation of sec. 9 of the Exchange Act is intended or can be established. Similar questions arise where he trades in anticipation of the rally which is apt to follow the 'cleanup' of a large sell order overhanging the market.

"Evidence in the Commission's possession indicates that such conduct does occur and, indeed, a substantial number of members on the floor have complained of such activities. In the nature of things, it is impossible to determine how often these things happen. But, as noted, the opportunity and incentive for such conduct is inherent in floor trading; and, while, the exchange endeavors to prevent such abuses, its efforts to do so have not been successful. Indeed, under present concepts of floor trading, these efforts could hardly be expected to be successful except perhaps by an inordinate expenditure of time and money."

[267] See, 2 Special Study, supra n. 39, at p. 231; Securities Exchange Act Release No. 7290 (Apr. 9, 1964) at p. 9.

[268] See 2 Special Study, supra n. 39, at p. 231.

[269] See, Securities Exchange Act Release No. 7290 (Apr. 9, 1964), at p. 11.

[270] See, e.g., NYSE Rule 111(b)(1), 2 CCH New York Stock Exchange Guide para. 2111 at p. 2712.

[271] See, e.g., NYSE Rule 112(b), 2 CCH New York Stock Exchange Guide para. 2112 at p. 2713.

[272] See, e.g., NYSE Rule 112(c) and Supp. Mat. para. 2112.24. 2 CCH, New York Stock Exchange Guide para. 2112 at p. 2713, para. 2112.24 at p. 2716.

[273] See, e.g., NYSE Rule 110 and Supp. Mat. para. 2110.10, 2 CCH, New York Stock Exchange Guide para. 2110 at 2711, para. 2110.10 at p. 2711.

[274] See, e.g., NYSE Rule 112, 2 CCH, New York Stock Exchange Guide para. 2112 at p. 2713.

[275] In explaining this view the Commission stated that:

"Registered traders would not be in a position to use the knowledge of their customers' orders in their trading activities and their ability to compete with the public generally would be substantially curtailed. A high capital requirement would limit floor trading to those members who can supplement the activities of specialists in acquiring and disposing of blocks. Finally, the exchange's commitment to automate surveillance would insure that the performance standards in the plan are enforced. It is anticipated that the net effect of such a plan would be to create a small group of professional dealers whose activities should be of maximum assistance to the public in the execution of orders on the exchange. The Commission will in the course of its program of exchange inspections determine whether the new program has the desired effects."

Securities Exchange Act Release No. 7290 (Apr. 9, 1964) at pp. 12–13.

[276] See, 2 Special Study, supra n. 39, at pp. 57–171; Wolfson & Russo, The Stock Exchange Specialists: An Economic and Legal Analysis, 1970 Duke L. J. 707, 717–737 (1970).

[277] See supra p. 3906.

[278] See S. Rep. No. 1455, 73d Cong., 2d sess., 31–45 (1934).

[279] Securities Exchange Act of 1934, sec. 9, 15 U.S.C. 78i.

[280] Securities Exchange Act, sec. 11(a)(2), 15 U.S.C. 78k(a)(2).

[281] 2 Special Study, supra n. 39, at p. 243. "(G)enerally speaking member trading from off the floor has excited little Commission or NYSE interest since 1935." Id., at p. 242.

[282] Securities and Exchange Commission, Report on Trading on the New York Stock

Exchange by Off-Floor Members, 1-2 (Feb. 1967) (available for inspection in the Commission's Public Reference Room, Washington, D.C.).

[283] Id., at p. 4.

[284] Ibid.

[285] Ibid.

[286] From the last quarter of 1964 to the third quarter of 1970 block trades executed on the New York Stock Exchange increased eleven times in absolute magnitude and seven times in relation to total NYSE volume. Institutional Investor Study supra n. 4, Pt. 4, at p. 1819. The distribution of block volume (of 10,000 shares or more) in NYSE listed securities among the NYSE, the regional exchanges and the third market was determined by the Study for 4 1-week periods, 2 in 1968 and 2 in 1969. During these 4 weeks the percentage of share executed in blocks on the NYSE was 66.74 percent, compared with 16.88 percent on the regional exchanges and 16.38 percent in the third market. Id., Table XI-9, pp. 1552-1554. This may be compared to the respective percentages in total volume: For the last quarter of 1967 through 1968 the NYSE proportion of total volume was about 88 percent, the regional exchanges about 8 percent and the third market from 3 to 4 percent. Id., Table XI-2, p. 1542. The study theorized that block trading developed since "such participation appealed to institutions because any cost to the active side over and above the brokerage commissions on that side (0.4 percent after average give-ups) was passed on to the passive side as a discount from last sale or a premium over it." Id., at p. 1941. This theory is not entirely persuasive, however; it would be a rarely insightful institutional manager who, in a performance oriented market, would be willing to give a selling discount or buying premium to a direct competitor. The willingness of "lead" brokers to give-up commission dollars undoubtedly made the block trade route more attractive than other methods of liquidation or acquisition from 1963-1968. In general, however, the block trading process probably developed through institutional desire to change positions with speed, anonymity and a minimum of cost.

[287] See, Institutional Investor Study, supra. n. 4, pt. 4, at pp. 1596-1607.

[288] See, e.g., id., at pp. 1943-1947. Averaging of 1,121 blocks in the study's sample of "minus tick" blocks, i.e., those blocks executed below last sale involving $1 million and over, produced a price recovery on the day of the trade of .71 percent. Within 10 trading days the price recovers slightly more (about 0.25 percent) and levels off to a new persistent price range. The total recovery is .96 percent or just enough to wipe out the commission charge. Id., Fig. XI-3 at p. 1729, text at p. 1723, Fig. XI-26 at p. 1756, Table XI-99 at p. 1786. Members may profit, therefore, from trading on the block rumor information, but nonmembers would find this activity frustrating, at best. Similarly, the Special Study analyzed a tender offer situation where members were able to use their commission rate advantage to profit from buying stock in the open market and tendering, whereas the nonmember would have been prevented from so doing by the closeness of the offering price to the market price. 2 Special Study, supra n. 39 at p. 245, n. 506.

[289] See 2 Special Study, supra n. 39, at p. 242. Several additional rules were proposed to the New York Stock Exchange by the Commission staff after the staff study of off-floor trading. These rules are now in effect. See, e.g., NYSE rules, Supp. Mat. Para. 2112.10 and .20, 2 CCH New York Stock Exchange Guide Para. 2112.10 and Para. 2112.20 at pp. 2714-2715.

[290] See, Letter, dated May 5, 1972, from William J. Casey, Chairman, Securities and Exchange Commission, to the Honorable Harrison A. Williams, Jr.

[291] See Hearings on H.R. 7852 and H.R. 8720 before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 124 (1934).

[292] Ibid. See also, 78 Cong. Rec. 2270-2271 (1934), cited at p. 3908, supra.

[293] It has been argued that trading advantages are not applicable for members of regional exchanges and therefore Rule 19b-2 need not apply to regional exchanges. See, e.g., Commission File No. S7-452, supra n. 16, written comments of the PBW Stock Exchange, Inc. (Sept. 8, 1972), at p. 14 and (Oct. 2, 1972), at pp. 10-11. This answer ignores three important points: (1) Volume on regional exchanges has increased greatly since 1964. For example, the annual dollar volume on all regional exchanges, in 1970 and 1971 was twice as great as the average annual dollar volume on the Amex during the years when floor trading on the primary exchanges was being analyzed and new restrictions imposed (1960-64). Securities and Exchange Commission 37th Annual Report 83 (1971). The dollar volume on the regionals has more than tripled since 1960; in 1970 and the first 6 months of 1971, dollar volume on the regionals was the equivalent of dollar volume on the Amex. Ibid. (2) Members of regional exchanges have many interrelationships with, or are themselves, members of the primary markets and conceptually are little different from off-floor, "upstairs" traders on the primary markets. For example, some institutions have stated that their regional membership is important because of the intangible "feel for the market" it provides. See, e.g., Commission File No. S7-452, supra n. 16, Transcript at p. 137. (3) As pointed out above, supra pp. 80-81 n. 251, the development of a central market system necessitates a uniform approach to membership qualifications. Furthermore, Rule 19b-2 is designed to operate in the context of the emerging central market system where members of all exchanges trading listed securities will have equal access to trading information and equal economic access to all exchange floors.

Indeed, even if exchanges had completely competitive rates and unlimited memberships, the necessity for Rule 19b-2 would still be compelling since members would always have better access rates to the markets than nonmembers and would still have an informational advantage over nonmembers.

[294] Senate Hearings on Institutional Membership, supra n. 110, pt. 1, at 210.

[295] New York Stock Exchange Fact Book (1972), at p. 53.

[296] New York Stock Exchange Fact Book (1972) at p. 71.

[297] New York Stock Exchange Fact Book (1972) at p. 10.

[298] See, e.g., Commission File No. 4-144, supra n. 65, Transcript at pp. 5578, 5716-21, 5749-54, 7724-25; Commission File No. 4-147, supra n. 84, Transcript at pp. 436, 440, 472, 1121, 1491, 2142-43, 2066, written comments of American Stockholders Assoc., Inc. (Nov. 10, 1971), at p. 1; Burnham & Co. (Oct. 28, 1971), at p. 3; Dreyfus Corp., Inc. (Nov. 15, 1972), at p. 13; Goldman, Sachs & Co. (Nov. 1, 1971), at p. 7; Lazard Freres & Co. (Nov. 16, 1971), at p. 3; Lehman Bros., Inc. (Nov. 10, 1971) at p. 11; National Association of Investment Clubs (Nov. 3, 1971), at p. 7; 1972 House Hearings, supra n. 110, pts. 7-9, at pp. 3985, 4100, 4241, 4243-4244, 4451; Senate Hearings on Institutional Membership, supra n. 110, at p. 350; The Commercial and Financial Chronicle, (Dec. 7, 1972), at p. 4; Barron's (July 17, 1972), at p. 1; New York Times (July 5, 1972) at pp. 55, 58.

[299] See Commission File No. 4-144, supra n. 65, Transcript at pp. 7724-7725. See also, id., at pp. 5749-5754.

[300] See Commission File No. 4-144, supra n. 65, Transcript at pp. 5716, 5720. Cf. Commission File No. 4-147, supra n. 84, Transcript at pp. 80, 238, 422, 436, 442, 472, 1121, 1491, 2142-43, 2633; written comment of the American Stock Exchange (Oct. 18, 1971), at p. 29; A. G. Becker & Co. (Nov. 16, 1971), at p. 3; Burnham & Co. (Oct. 28, 1971), at p. 3; Cantella & Co. (Nov. 1971), at p. 4; First Boston Corp., Inc. (Nov. 4, 1971), at p. 8; Goldman, Sachs & Co. (Nov. 1, 1971), at pp. 5-7; Lehman Bros., Inc. (Nov. 10, 1971), at p. 10; The Committee for the Martin Report (Oct. 20, 1971), at pp. 11-14; Midwest Stock Exchange (Oct. 26, 1971), at p. 11; and Weiss, Peck & Greer (Nov. 9, 1971), at p. 2.

[301] Subcommittee on Domestic Finance, House Committee on Banking and Currency, "Commercial Banks and Their Trust Activities: Emerging Influence on the American Economy", 90th Cong., 2d Sess., Vol. 1, at p. 5. (Subcomm. Print, 1968).

[302] See infra p. 3916.

[303] Commission File No. S7-452, supra n. 16, written comments of the Pacific Coast Stock Exchange, (Sept. 27, 1972), at pp. 1-2; PBW Stock Exchange, Inc., (Oct. 2, 1972), at p. 23.

[304] See, e.g., Commission file No. S7-452, supra n. 16, written comments of Aetna Life and Casualty Co. (Oct. 3, 1972), at pp. 3-4; American Bankers Assoc. (Oct. 3, 1972), at p. 2; American Insurance Assoc. (Oct. 3, 1972), at p. 5; American Life Convention-Life Insurance Assoc. of America (Oct. 3, 1972), pp. 6-10, 17-18; Goldman, Sachs & Co. (Sept. 20, 1972), at pp. 1-3, 6; U.S. Department of Justice (Oct. 3, 1972), at pp. 22-24; Laird, Inc. (Oct. 5, 1972), at pp. 1, 3; Morris Mendelson (Sept. 22, 1972), at p. 2; Sherman, Dean & Co. (Oct. 10, 1972), at p. 1; and Wellington Management Co. (Oct. 2, 1972), at pp. 3-4.

[305] House Study, at pp. 148-149, S. 4071, 92d Cong., 2d Sess. (Oct. 9, 1972), 118 Cong. Rec. S. 17218 (Daily ed., Oct. 9, 1972).

[306] See, Commission File No. S7-452, supra n. 16, written comments of Davis, Skaggs & Co., Inc. (Sept. 20, 1972), at p. 1; Securities Industry Association (Oct. 9, 1972), at p. 3, and Sutro & Co. (Sept. 28, 1972), at p. 1. For comments implicity supporting the 80-20 tests, see, id., written comments of the American Stock Exchange (Oct. 16, 1972), at p. 1; Boston Stock Exchange (Sept. 29, 1972), at pp. 1-2; Donaldson, Lufkin & Jenrette, Inc. (Oct. 2, 1972), at p. 12; Lehman Bros., Inc. (Oct. 17, 1972), at pp. 1, 2; The Committee for the Martin Report (Oct. 3, 1972), at p. 1; and the New York Stock Exchange (Oct. 16, 1972), at pp. 1, 3-4. For comments supporting the test as a first step, see id., written comments of Cyrus J. Lawrence & Sons (Sept. 29, 1972), at p. 1 and Merrill Lynch, Pierce, Fenner & Smith, Inc. (Oct. 16, 1972), at p. 3.

[307] In addition, as the Commission noted in its Policy Statement, supra n. 1, at p. 23, whether the functions of brokerage and money management should be immediately separated or whether the inherent conflicts of interest can be handled by disclosure and enforcement of fiduciary principles should be decided by the Congress. Congress declined to separate the function of broker and dealer in 1934, although it gave the Commission authority in certain circumstances. See, supra text at pp. 3906-3912.

[308] One of the more forceful and articulate advocates of broad structural change in the securities industry has apparently seen some merit in an approach which permits administrative flexibility. In opposing a legislative solution to the issue of institutional membership, the Department of Justice stated:

"Our reluctance to abandon the advantages of the administrative process in dealing with this problem is based on two grounds. First, as indicated above, we view the institutional membership issues as largely arising out of the issue of fixed minimum commission rates employed by the national securities exchanges. While we have long opposed the maintenance of fixed rate systems, we have advocated a gradual, flexible process of eliminating fixed rates * * *. The SEC is presently

engaged in a gradual elimination of the fixed rate system. As fixed rates are gradually eliminated, the incentive for institutions to obtain membership in exchanges will diminish; and therefore, when the process of eliminating fixed rates is completed, the institutional membership question may be analyzed from a fresh perspective—perhaps that of considering whether the functions of brokerage and money management should be absolutely isolated from one another * * *. In the meantime, the SEC should be free to seek a gradual, flexible solution to the institutional membership question, similar to and in coordination with its gradual program of eliminating fixed commission rates." [Citations omitted.]

Letter, dated June 12, 1972, from Richard G. Kleindienst, Acting Attorney General, to the Honorable John J. Sparkman, Chairman, Senate Committee on Banking, Housing and Urban Affairs, reprinted in Senate Hearings on Institutional Membership, supra n. 110, pt. 1, at pp. 7–9.

[409] The criticisms made of an 80–20 ratio in the Commission's 19b–2 proceeding were substantially similar to the criticisms raised in the House Study, supra n. 4, at pp. 151–152. The point was raised by some commentators that an 80–20 formula would encourage a wave of mergers between institutions and member firms. If institutions believe that investment in a brokerage firm conducting a public securities business is wise, the removal of the "parent" test, an accomplishment long sought by the parties making the above argument, by itself paves the way for such mergers. Nevertheless, we do not believe an artificial barrier preventing such affiliations is in the public interest. The nation has no public policy against business combinations per se. To the extent that a particular merger is undesirable because of its anticompetitive consequences, the antitrust laws are more than adequate to prevent them. See sec. 1 of the Sherman Antitrust Act 15 U.S.C. 1 and sec. 7 of the Clayton Antitrust Act 15 U.S.C. 18; United States v. Greater Buffalo Press, Inc., 402 U.S. 549 (1971); United States v. Phillipsburg National Bank & Trust Co., 399 U.S. 350 (1970); United States v. Third National Bank in Nashville, 390 U.S. 171 (1968); Federal Trade Commission v. Proctor & Gamble Co., 386 U.S. 568 (1967); United States v. Philadelphia National Bank, 374 U.S. 321 (1963). See also, Commission File No. 4–144, supra n. 65, Statement of the Antitrust Division of the United States Department of Justice, Appendix A, "Antitrust Rules Dealing with Concentration" (Dec. 1, 1971), wherein it was stated: "The Department of Justice is confident that, through the application of these merger rules, concentration in the securities industry due to aggressive merger programs can be avoided." In any event, the Commission believes it unlikely that an institution would take on the capital risk and expense of acquiring a member firm which does a public business, solely to recapture commission dollars on the amount involved below the competitive rate breakpoint.

Another point raised by some commentators was that the "80–20" test will induce churning of public customer accounts. The Commission has traditionally viewed churning as a serious and flagrant violation of the antifraud statutes and has no reservations in enforcing the prohibition of churning forcefully. If employees of a firm were to churn accounts, particularly as part of a general firm policy, the Commission's response would be prompt and vigorous. Absent such a firm policy, it is difficult to see why a registered representative would have a greater incentive to churn accounts than now, since the major incentive to churn is his desire to increase commission income.

[410] Policy Question Number 1—"In its present form, the Commission's proposed rule requires that every member or member organization must have as the principal purpose of its exchange membership the conduct of a public securities business. A member organization will be deemed to have such a purpose if at least 80 percent of the value of its exchange securities transactions are for or with unaffiliated customers or are specified principal transactions. In order to be deemed to have such a purpose should a member corporation also be required to derive 80 percent of its security commission income relating to exchange transactions from transactions for or with unaffiliated customers?"

[411] See, e.g., Commission File No. S7–452, supra n. 16, written comment of Oppenheimer & Co. (Oct. 2, 1972), at pp. 2–3.

[412] See, e.g., Commission File No. S7–452, supra n. 16, written comment of Scudder, Stevens and Clark (Oct. 2, 1972), at p. 5. For other commentators supporting a 2-pronged test, security commission income and the value of exchange transactions, see, id., written comments of the Boston Stock Exchange (Sept. 29, 1972), at p. 1; Donaldson, Lufkin & Jenrette, Inc. (Oct. 2, 1972), Appendix, at p. 1; Investment Counsel Assoc. of America, Inc. (Oct. 3, 1972), Exhibit, at p. C–1; The Committee for the Martin Report (Oct. 3, 1972), at pp. 1–2; and Sutro & Co. (Sept. 28, 1972), at p. 1.

[412a] Data collected by the Commission to monitor the impact of negotiated rates show that some orders involve no commission on the amount involved over the competitive rate breakpoint while some orders involved the equivalent of a full minimum commission. After averaging, agency transactions show approximately a 10 percent greater discount from the precompetitive rate minimum scheduled than do principal transactions. See, Hearings on S. 3169 Before the Subcommittee on Securities of Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., 124–141 (1972).

[413] See Commission File No. S7–452, supra n. 16, written comment of Oppenheimer & Co. (Oct. 2, 1972), at p. 3.

[413a] Indeed, it is the Commission's experience that some brokerage firms with affiliated investment companies charge those investment companies the equivalent of the lowest rate the broker has negotiated at arm's length with any unaffiliated institutional customer on similar transactions.

[414] See Commission File No. S7–452, supra n. 16, Transcript at pp. 156–157.

[415] See Commission File No. S7–452, supra n. 16, written comment of the New York Stock Exchange (Oct. 16, 1972), at pp. 3–5. These exceptions were considered necessary to prevent distortions which might be caused by the generally high dollar volume involved in such transactions. Ibid.

[416] At times an institution may desire brokerage services in the third market, for example, when it needs anonymity in shopping a block or because a particular firm has a superior execution capability or is known for its expertise in a particular stock. These are the very reasons, however, why an institution needing brokerage services in the third market would not use its affiliate. Moreover, in the fully negotiated third market there are little, if any, cost savings in using one's own broker. The affiliated broker, it would appear, can do little for the institution in the third market that the institution's trading desk could not do itself.

[417] See, e.g., Commission File No. S7–452, supra n. 16, written comments of the New York Stock Exchange (Oct. 16, 1972), at p. 4; Merrill Lynch, Pierce, Fenner & Smith, Inc. (Oct. 16, 1972), at pp. 3–4; and Sutro & Co., Inc. (Sept. 28, 1972), at p. 1.

[418] See Commission File No. S7–452, supra n. 16, written comment of the Midwest Stock Exchange (Sept. 29, 1972), at pp. 1–2.

[419] See Commission File No. S7–452, supra n. 16, written comment of Investors Diversified Services, Inc. (undated), at pp. 7–8.

[420] See Commission File No. S7–452, supra n. 16, written comments of the New York Stock Exchange (Oct. 16, 1972), at p. 2; the Midwest Stock Exchange (Sept. 29, 1972), at p. 5 and (Nov. 6, 1972), at p. 2.

[421] See Commission File No. S7–452, supra n. 16, written comment of Oppenheimer & Co. (Oct. 2, 1972), at pp. 2–3.

[422] See Commission File No. S7–452, supra n. 16, written comment of the PBW Stock Exchange, Inc. (Oct. 2, 1972), at pp. 22–23.

[423] Moreover, some kinds of arbitrage do involve risk taking (risk arbitrage), as in the case of a takeover bid or a corporate reorganization where the arbitrageur enables a securityholder to pass on for a discount the risk of whether a proposed purchase or exchange of securities will take place.

[424] See Commission File No. S7–452, supra n. 16, written comment of Midwest Stock Exchange (Sept. 29, 1972), at p. 7.

[425] See Commission File No. S7–452, supra n. 16, written comment of the New York Stock Exchange (Oct. 16, 1972), at p. 4.

[426] Securities and Exchange Commission, Report on the Public Policy Implications of Investment Company Growth, H.R. Rept. No. 2337, 89th Cong., 2d sess., 64–72 (1966).

[427] See sec. 2 of the Investment Company Act, 15 U.S.C. 80a–2(a) (3) (E). The influence of a fund manager with fund share holders in the operation of the fund can hardly be gainsaid. See Rosenfeld v. Black, 445 F. 2d 1337, 1343 (C.A. 2, 1971), certiorari dismissed, sub. nom., Lazard Freres & Co. v. Rosenfeld, by agreement of the parties, No. 71–771 (U.S. Sup. Ct., Sept. 1, 1972).

[428] See infra text at p. 3923 Cf., Investment Company Act, sec. 2(a) (3) (A) and (B), 15 U.S.C. 80a–2(a) (3) (A) and (B).

[429] Cf., sec. 15 of the Securities Act, 15 U.S.C. 77o and Rule 405 thereunder, 17 CFR 230.405; sec. 20 of the Securities Exchange Act, 15 U.S.C. 78t and Rule 12b–2 thereunder, 17 CFR 240.12b2; sec. 202(a) (11) of the Investment Advisers Act, 15 U.S.C. 80–b 202(a) (11); the Trust Indenture Act 15 U.S.C. 78aaa et seq., and Rule 0–2 thereunder, 17 CFR 230.0–2; and sec. 2(11) of the Public Utility Holding Company Act, 15 U.S.C. 79b–2(11).

[430] Cf., sec. 2(a) (9) of the Investment Company Act, 15 U.S.C. 80a–2(a) (9).

[431] See, e.g., Commission File No. S7–452, supra n. 16, written comments of Investors Diversified Services (undated), at pp. 12–17; U.S. Department of Justice (Oct. 3, 1972), at pp. 17–20. But see id., written comments of the American Stock Exchange (Oct. 16, 1972), at pp. 3–4; the Boston Stock Exchange (Sept. 29, 1972), at p. 2; Davis, Skaggs & Co., Inc. (Sept. 20, 1972), at p. 2; Donaldson, Lufkin & Jenrette, Inc. (Oct. 2, 1972), at pp. 2–11; Lehman Bros., Inc. (Oct. 17, 1972), at pp. 5–6; The Committee for the Martin Report (Oct. 3, 1972), at p. 2; Merrill Lynch, Pierce Fenner & Smith, Inc. (Oct. 16, 1972), at pp. 3–4; Midwest Stock Exchange (Sept. 29, 1972), at p. 3; New York Stock Exchange (Oct. 16, 1972), at p. 6; Pacific Coast Stock Exchange (Sept. 27, 1972), at p. 3; Reich & Tang, Inc. (Sept. 29, 1972), at pp. 1–2; and the Securities Industry Assoc. (Oct. 9, 1972), at pp. 8–9.

[432] See, e.g., Commission File No. S7–452, supra n. 16, written comments of the Allstate Insurance Co. (Sept. 29, 1972), at p. 3; the American Bankers Assoc. (Oct. 3, 1972), at pp. 1–2; the American Insurance Assoc. (Oct. 12, 1972), at pp. 8–9; the American Life Convention-Life Insurance Assoc. of America (Oct. 3, 1972), at pp. 12–17; Equity Services, Inc. (Sept. 21, 1972), at p. 5; James Ellis (Aug. 23, 1972), at p. 5; Guardian Advisors, Inc. (Sept. 22, 1972), at p. 3; C. J. Lawrence & Sons (Oct. 17, 1972), at p. 2; Penn Mutual Securities Corp. (Oct. 6, 1972), at pp. 4–5; the Phoenix Equity Planning Corp. (Sept. 14, 1972), at p. 2.

[433] See, e.g., Commission File No. S7-452, supra n. 16, written comments of Investors Diversified Services, Inc. (undated), at p. 15; Oppenheimer & Co., Inc. (Oct. 2, 1972), at pp. 3-5; U.S. Department of Justice (Oct. 3, 1972), at p. 38.

[434] One commentator was concerned that use of the terms "control" and "affiliated person" would engender confusion since Congress has before it other proposals which bear on these relationships. See Commission file S7-452, supra n. 16, written comment of Smith, Barney & Co. (Sept. 29, 1972), at p. 2. Since the Commission assigns to these terms their traditional legal meaning, however, confusion should be minimal.

One commentator suggested that whatever decision is made on Rule 19b-2, the Commission must provide a special exception for brokerage firms representing sovereign governmental bodies. See Commission File No. S7-452, supra n. 16, Transcript at pp. 229-231; see also, Senate Hearings on Institutional Membership, supra n. 110, pt. 1, at pp. 75-83.

We are aware of no authority, however, for the view that an instrumentality of a State, when engaging in proprietary functions, must obtain special privileges not otherwise accorded to other persons engaged in the same functions.

[435] Control is essentially the domination of another's affairs. See American Gas & Electric Co. v. Securities and Exchange Commission, 134 F. 2d 633 (C.A.D.C. 1943), certiorari denied, 319 U.S. 763 (1943) "Domination may spring as readily from subtle or unexercised power as from arbitrary imposition of command." North American Co. v. Securities and Exchange Commission, 327 U.S. 686, 693 (1946). In any event, it is clear that control cannot be determined by artificial tests but is an issue of fact to be determined by the special circumstances of each case. Rochester Telephone Corp. v. United States, 307 U.S. 125, 145 (1939). See, generally, Sommer, Who's "In Control"?—SEC, 21 Bus. Lawyer 559 (1966).

[436] See, e.g., Policy Statement, supra n. 1, at p. 23.

[437] The control presumption in proposed Rule 19b-2 was based on "25 percent or more" of the voting securities of participation in profits. In response to a request for uniformity with the Investment Company Act made by some commentators, this language has been changed to "more than 25 percent." See, e.g., Commission File No. S7-452, supra n. 16, written comments of Davis, Polk & Wardwell (Oct. 2, 1972), at p. 1; and the New York Stock Exchange (Oct. 16, 1972), at p. 9.

[438] See Commission File No. S7-452, supra n. 16, written comment of the New York Stock Exchange (Oct. 16, 1972), at p. 8.

[439] See Commission File No. S7-452, supra n. 16, written comment of Investors Diversified Services, Inc. (undated), at pp. 6-8; PBW Stock Exchange, Inc. (Oct. 2, 1972), at pp. 15-16; U.S. Department of Justice (Oct. 3, 1972), at pp. 18-20.

[440] See, e.g., Robert W. Stark, Jr., Inc. v. New York Stock Exchange, 346 F. Supp. 217 (S.D.N.Y.), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972); J. P. Morgan & Co., Inc., 10 SEC 119 (1941). See generally, II L. Loss, Securities Regulation 770-783 (2d ed. 1961); Commer, Who's "In Control"?—SEC, 21 Bus. Lawyer 559 (1966).

[441] See, e.g., Commission File No. S7-452, supra N. 16, Transcript at pp. 4, 5, 8-10, 52-77.

[442] See, e.g., Commission File No. S7-452, supra N. 16, Transcript at pp. 54, 59, 60.

[443] Many investment advisers have preferred to emphasize a separation between the money management and brokerage business and have chosen not to join an exchange. A tenet of the Investment Counsel Association of America, Inc., for example, so requires. That is a business judgment. See 1972 House Hearings, supra n. 110, pt. 8, at p. 4212.

[444] Insurance companies have traditionally offered a wide range of services to pension customers. See Senate Hearings on Institutional Membership, supra n. 110, pt. 2, at pp. 93-94.

The Institutional Investor Study reported that:

"insurers of all sizes regard their ability to offer a package of actuarial, administrative, and investment services as the most important competitive advantage they hold over banks, which do not offer actuarial services in particular. Also, of considerable importance to many companies is their ability to provide investment, mortality, and other guarantees. These two factors constitute the means by which insurers have traditionally been able to differentiate the services they can provide pension plan customers from those obtainable from banks or other investment managers * * *. [T]hey were cited as the two greatest competitive advantages by the preponderance of insurers of all sizes.

"Aside from those services, the remaining factor most often mentioned as a significant competitive advantage was the ability of life insurers to offer related benefit programs such as group term insurance, disability income and medical coverage. * * *

"It is also conceivable that insurers' large lending operations produce customers for the group annuity department. This would seem plausible because most life companies' acquisitions of debt obligations are private placements, so that close relationships are developed between insurers and corporate borrowers. However, these relationships were regarded as relatively unimportant by most responding insurers." Institutional Investor Study, supra n. 4, pt. 2, at p. 554. See also id. at pp. 543-545.

[445] See secs. 16, 20, 21, 32 of the Banking Act of 1933, as amended, 12 U.S.C. 24, 78, 377, 378.

[446] See secs. 101, 103 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, 1843(c)(8).

[447] In contrast to the results for insurance companies, the Institutional Investor Study data showed a strong positive relationship for banks between the management of a corporation's pension plan assets and the existence of a loan relationship with the corporation. See Institutional Investor Study, supra n. 4, pt. 5, at pp. 2721-2722. As one commentator put it:

"The use of income from other sources to support unrealistically low management fees is not unique to broker-dealers. Banks, for instance, have had very low fees which in great part reflect the benefits received by the commercial department of the banks from these advisory relationships. According to Federal Reserve Board statistics the trust department of 10 large New York City banks lost $32.3 million in 1970."

Senate Hearings on Institutional Membership, supra n. 110, pt. 2, at p. 620.

[448] Policy Question Number 3—

"Should the proposed rule include officers, directors, partners of member organizations and members of their immediate families in the definition of an affiliated person or should their affiliation be judged by the presence or absence of control? The Commission believed it unnecessary to include such persons in its definition and has revised the rule it originally requested the exchanges to adopt accordingly. Comments are invited on the deletion."

[449] See Commission File No. S7-452, supra n. 16, written comments of the American Stock Exchange (Oct. 16, 1972), at p. 4; the Boston Stock Exchange (Sept. 29, 1972), at p. 3; Davis, Skaggs & Co., Inc. (Sept. 20, 1972), at p. 2; Donaldson, Lufkin & Jenrette, Inc. (Oct. 2, 1972), Appendix, at p. 3; Goldman, Sachs & Co. (Sept. 20, 1972), at p 4; Lehman Bros., Inc. (Oct. 17, 1972), at pp. 3-4; The Committee for the Martin Report (Oct 2, 1972), at 2; Merrill Lynch, Pierce Fenner & Smith, Inc. (Oct. 16, 1972), at p. 4; the Midwest Stock Exchange (Sept. 24, 1972), at 3; the Pacific Coast Stock Exchange (Sept. 27, 1972), at p. 3; the Securities Industry Assoc. (Oct. 9, 1972), at p. 4, and Sutro & Co., Inc. (Sept. 28, 1972), at p. 1.

[450] See Commission File No. S7-452, written comment of the American Stock Exchange (Oct. 16, 1972), at p. 4.

[451] See Commission File No. S7-452, supra n. 16, written comment of the New York Stock Exchange (Oct. 16, 1972), at p. 5.

[452] See Commission File No. S7-452, supra n. 16, written comments of Donaldson, Lufkin & Jenrette (Oct. 2, 1972), appendix, at p. 2; Merrill Lynch, Pierce, Fenner & Smith, Inc. (Oct. 16, 1972), at p. 4; the New York Stock Exchange (Oct. 16, 1972), at p. 5; Scudder Stevens and Clark (Oct. 2, 1972), at p. 6.

[453] See Commission File No. S7-452, supra n. 16, written comments of Merrill Lynch, Pierce, Fenner & Smith, Inc. (Oct. 16, 1972), at p. 4.

[454] See, e.g., Commission File No. S7-452, supra n. 16, written comments of the American Life Convention-Life Insurance Assoc. of America (Oct. 3, 1972), at pp. 12-13; the U.S. Department of Justice (Oct. 3, 1972), at p. 17-20; the Investment Counsel Assoc. of America, Inc. (Oct. 3, 1972), Exhibit C, at p. 3; Investors Diversified Services, Inc. (undated) at pp. 9-11; Laird, Inc. (Oct. 5, 1972), at p. 3; the PBW Stock Exchange, Inc. (Oct. 2, 1972), at p. 27; Scudder Stevens & Clark (Oct. 2, 1972), at p. 6; and Wellington management Co. (Oct. 2, 1972), at p. 6.

[455] See Commission File No. S7-452, supra n. 16, written comment of Investors Diversified Services, Inc. (undated), at pp. 9-11.

[456] For example, NYSE Rule 407(b)(1), 2 CCH New York Stock Exchange Guide Para. 2407 at p. 3701, only requires that members or officers of member organizations not maintain securities or commodities accounts at other member organizations or banks without the prior written consent of the member organization. In the event permission is granted, the member organization must receive monthly reports and make periodic reviews. This rule would appear to be necessary as a corollary to Rule 342, requiring member organizations to exercise supervisory control over the activities of employees.

[457] It should be noted that those persons having the power of control over a member corporation, but not specifically named, would still be considered affiliated under clause 2(b)(1).

[458] See, infra, p. 3928.

[459] These agency orders to purchase or sell U.S. securities are channeled to the domestic subsidiary for execution in the same fashion that a foreign subsidiary or branch office of a U.S. brokerage firm transmits orders received to its home office within the United States. In several European nations, the traditional brokerage function must by law be performed by a banking institution. This combination of functions is required, for example, in Switzerland and Germany. In France and Italy, there is no legal requirement that all banks act as brokers or that all brokers be banks; however, by custom and tradition most of the public securities business in these countries is conducted by banks. In England, Japan, and Belgium, on the other hand, each function may be carried on separately, and brokers which do not offer any commercial banking services are common.

[460] Policy Question Number 5—

"It has been pointed out that member organizations controlled by entities not incorporated within the United States may be faced with problems not anticipated by the rule. The purpose of such an organization often is to serve as broker for customers of its foreign parent, which may itself be a broker-dealer or, in many continental countries, may be a bank performing the traditional broker-dealer functions. Should business done for such customers be treated as having been done for unaffiliated persons?"

[461] See Commission File No. S7-452, supra n. 16, written comment of the Securities Industry Association (Oct. 9, 1972), at pp. 4-5. Other commentators concurred in the conclusion for different reasons. See Commission File No. S7-452, supra n. 16, written comments of the American Stock Exchange (Oct. 16, 1972), at p. 5; the Investment Counsel of America Assoc., Inc. (Oct. 3, 1972), Exhibit C, at p. 2; Investors Diversified Services, Inc. (undated), at pp. 31-32; Cyrus J. Lawrence & Sons (Sept. 29, 1972), at p. 2; and the New York Stock Exchange (Oct. 16, 1972) at pp. 6-7. But, see Commission File No. S7-452, supra n. 16, written comments of Baer Securities Corp. (Oct. 3, 1972), passim; Boston Stock Exchange (Sept. 29, 1972), at pp. 2-3; Cazenove, Inc. (Sept. 28, 1972), passim; Europartners Securities Corp. (Sept. 29, 1972), passim; Goldman, Sachs & Co. (Sept. 20, 1972) at p. 3; The Committee for the Martin Report (Oct. 3, 1972) at p. 3; Midwest Stock Exchange (Sept. 29, 1972), at p. 3 (Nov. 6, 1972), at pp. 1-2; Pacific Coast Stock Exchange (Sept. 27, 1972) at pp. 3-4; the PBW Stock Exchange, Inc. (Oct. 2, 1972), at p. 30; the Suez American Corp. (Sept. 9, 1972), at pp. 1-2; SoGen International Corp. (Oct. 3, 1972), passim; UBS-DB Corp., (Oct. 2, 1972), passim.

[462] NYSE Rule 314.14, 2 CCH New York Stock Exchange Guide, par. 2314.14 at p. 3070.

[463] See Commission File No. S7-452, supra n. 16, written comment of UBS-DB Corp. (Oct. 2, 1972), at p. 4.

[464] Policy Question No. 2

"Should each exchange be required to adopt an identical rule or should any exchange be permitted to adopt a rule varying from the general pattern to some extent to accommodate particular circumstances of that exchange, so long as all such rules embody and carry out the basic objectives, and if such variations do not result in competitive inequality?"

[465] Cf. sec. 19(a)(1) of the Securities Exchange Act 15 U.S.C. 78s(a)(1).

[466] See infra, p. 3927.

[467] Policy Question No. 6

"Should the phase-in period contained in the Commission's request be shortened or left to the discretion of the various exchanges as is now contemplated, and at what point should the proposed plan for compliance by the end of the phase-in period be required to be submitted? Are there any equitable reasons for moving the cutoff date of June 23, 1970 forward?"

[468] See infra p. 3927.

[469] See e.g., Securities Exchange Act Releases Nos. 8239 (Jan. 26, 1968), 8348 (July 1, 1968), 8432 (Oct. 21, 1968).

[470] In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270, 286-287 (1941).

[471] See letter, dated Apr. 29, 1965, from A. Willis Robertson, Chairman, Senate Committee on Banking and Currency, to Manuel F. Cohen, Chairman, Securities and Exchange Commission, reprinted at 111 Cong. Rec. 19019 (1965):

"The basic purpose of the antitrust laws is to promote and foster competition and to prevent monopolies. Vigorous and effective competition in the securities business and the securities markets is important to investors, to the financing of industry, and to the growth and development of our economy. The committee is aware, however, that in a regulated field competitive considerations assume a somewhat different aspect than in unregulated industries and may call for different forms of regulation."

[472] See pp. 3906-3909, supra.

[473] See, e.g., secs. 2, 11, 12, and 19(b)(9) of the Act. See also, Silver v. New York Stock Exchange, 373 U.S. 341 (1963). In Silver, the Court recognized that the Securities Exchange Act embodied

"a public policy contemplating that securities exchanges will engage in self-regulation which may well have anti-competitive effects in general and in specific applications."

373 U.S. at 349; see also, id. at pp. 350 ("The exchanges are by their nature bodies with a limited number of members * * *."); 355 ("Rules which regulate Exchange members' doing of business with nonmembers are therefore very much pertinent to the aims of self-regulation under the 1934 Act"); 360 ("The entire public policy of self-regulation, beginning with the idea that the Exchange may set up barriers to membership, contemplates that the Exchange will engage in restraints of trade which might well be unreasonable absent sanction by the Securities Exchange Act"). Accord, Ricci v. Chicago Mercantile Exchange, No. 71-858 (U.S. Sup. Ct., Jan. 9, 1973), Slip op. at pp. 13, 15 (majority opinion), dissenting opinion of Marshall, J., at p. 6; Kaplan v. Lehman Bros., 371 F. 2d 409 (C.A. 7), certiorari denied, 389 U.S. 954 (1967); Robert W. Stark, Jr., Inc. v. New York Stock Exchange, Inc., 346 F. Supp. 217, 228 (S.D. N.Y.), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972).

[474] See Commission File No. S7-452, supra n. 16, written comments of PBW Stock Exchange, Inc. (Sept. 8, 1972) at p. 11; PBW Stock Exchange, Inc. (Oct. 2, 1972) at p. 3; Midwest Stock Exchange (Sept. 29, 1972) at p. 8; Antitrust Division of the U.S. Department of Justice (Oct. 3, 1972) at pp. 4-16; Aetna Life and Casualty Co. (Oct. 3, 1972) at p. 5; Investors Diversified Services (undated) at p. 5; Channing Management Corp. (Oct. 5, 1972) at pp. 9-10; American Life Convention-Life Insurance Association of America (Oct. 3, 1972) at pp. 4-10; Sherman Dean and Co. (Oct. 10, 1972); American Insurance Association (Oct. 12, 1972) at p. 8.

[475] Thus, for example, compare Municipal Electric Assoc. of Mass. v. Securities and Exchange Commission, 413 F. 2d 1052 (C.A. D.C.), with City of Lafayette v. Securities and Exchange Commission, 454 F. 2d 941 (C.A. D.C., 1971), certiorari granted in a related case, sub nom. Gulf States Utilities v. Federal Power Commission, 406 U.S. 956 (1972).

[476] These are the standards governing Commission regulation, as opposed to self-regulation. See, e.g., sections 11(a) and 19(b) of the Securities Exchange Act.

[477] See discussion infra, pp. 3926-3927.

[478] See cases cited at n. 489, infra. See also, Ricci v. Chicago Mercantile Exchange, No. 71-858 (U.S. Sup. Ct., Jan. 9, 1973).

[479] 373 U.S. 341 (1963).

[480] Id. at pp. 358-360 (emphasis supplied); cf. United States v. Interstate Commerce Commission, 396 U.S. 491 (1970).

[481] 346 F. Supp. 217 (S.D. N.Y.), affirmed per curiam, 466 F. 2d 743 (C.A. 2, 1972).

[482] Id at p. 229.

[483] Antitrust Division of the U.S. Departmnt eof Justice, Memorandum on the Issues to Be Decided at Trial and the Proposed Procedure to Be Followed, Thill Securities Corp. v. New York Stock Exchange, Civ. Action No. 63-C-264 (E.D. Wis.), reprinted in Senate Hearings on Institutional Membership, supra, n. 110, at pt. 1, p. 389.

[484] See discussion supra, p. 3905.

[485] See discussion supra, p. 3903.

[486] This view implicitly was recognized by the House Study, supra n. 4, which had the following comment on Securities Exchange Act Rule 19b-2, as proposed:

"The agency's proposed rule would require large national brokerage firms which engage in money management activities to do $8 of nonaffiliated brokerage business for every $2 of affiliated brokerage business * * *. The Subcommittee opposes a type of rule which would, in effect, require national firms, to compete with regional firms in situations where they would otherwise choose not to do so."

Id. at p. 152 (emphasis supplied).

[487] See, e.g., Silver v. New York Stock Exchange, 373 U.S. 341 (1963); Associated Press v. United States, 326 U.S. 1 (1945); United States v. Terminal R.R. Assoc., 224 U.S. 383 (1912). Of course, these cases did not present any question of the scope or appplicability of the antitrust laws to governmentally directed regulator action, and we do not mean to suggest that the standards enunciated in these cases should govern our regulatory activities. See discussion infra, pp. 3926-3927.

[488] United States v. Paramount Pictures, 334 U.S. 131 (1948); Orbo Theatre Corp. v. Loews, Inc., 156 F. Supp. 770 (D. D.C., 1957), affirmed, 261 F. 2d 380 (C.A. D.C., 1958), certiorari denied, 359 U.S. 943 (1959); United States v. Columbia Steel, 334 U.S. 495, rehearing denied, 334 U.S. 862 (1948).

[489] Eastern R.R. Pres. Conf. v. Noerr Motors, 365 U.S. 127, 136 (1961). See also, United States v. Rock Royal Co-op., 307 U.S. 533, 560 (1939); Parker v. Brown, 317 U.S. 341 (1943); Olsen v. Smith, 195 U.S. 332, 344-345 (1904); Carnation Co. v. Pacific Westbound Conf., 383 U.S. 213, 221-222 (1966). This immunity has been construed to include governmental agents while acting within the scope of their authority in furtherance of a declared governmental policy or legislative scheme. Union Carbide and Carbon Corp. v. Nisley, 300 F. 2d 561, 576 (C.A. 10), certiorari dismissed, 371 U.S. 801 (1962).

[490] Recognizing that the size of securities orders may reduce costs, we have firmly committed this agency to the proposition that volume discounts and negotiated rates on institutional-sized orders are appropriate. See p. 3904, supra. But large investors are no more entitled to direct access to the exchange mechanism than smaller investors. As the Special Study supra, n. 39, noted, in defining some of the broad terms used in the Securities Exchange Act:

"'Fair' and 'honest' presumably encompass the notion of freedom from manipulative and deceptive practices of all kinds and may be regarded as positive expression of the act's ban on such practices, acts, and devices. 'Fair' also presumably implies, especially in the several references to 'fair dealing' and also the reference to 'unfair discrimination between customers or issuers, or brokers or dealers,' that there be no undue advantage or preference among participants in the marketplace; i.e., that there be no unnecessary discrimination in opportunity or treatment or in access to facilities or information."

Special Study, supra, n. 39, at pt. 2, p. 14.

[491] This principle has been applied in a number of contexts. See, e.g., United States v. Terminal Railroad Assoc., supra n. 487, Associated Press v. United States, supra n. 487.

[492] See pp. 3906-3909, supra.

[493] Hearings on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. at pp. 124-125 (1934).

[494] See n. 1, supra.

[495] Policy Statement, supra, n. 1, at pp. 7-9.

[496] Id., at p. 8.

[497] See n. 4, supra.

[498] Id., at pt. 3, p. 1317; see also, id., at pp. 1308–1309.

[499] See, e.g., Institutional Investor Study, supra n. 4., at pt. 1, p. xxii:

"The evolution of the securities markets has been, and many continue to be, affected and distorted by barriers to competition. Among the most significant of these are minimum commission rates and rules that insulate markets, market makers and broker-dealers from each other. The combination of fixed minimum commission rates and barriers to access have tended to cause institutions to choose marketplaces, in part at least, for the purpose of reducing the commission they pay or taking advantage of opportunities to purchase various services with 'soft' commission dollars by means of reciprocal practices. These appear to be the most important explanations for the accelerating growth of institutional trading on the regional exchanges and the third market."

[500] As the Study found (ibid.):

"The fixed minimum stock exchange commission on large orders has led to the growth of complex reciprocal relationships between, on the one hand, institutions (particularly mutual fund managers and banks) and, on the other, broker-dealers. This has had the effect of making commission rates for institutions negotiable but limiting the extent to which the ultimate investor rather than the money manager has benefited from such negotiation."

The Commission, over the years, expressed its view that, to the extent opportunities for rebating commissions exist, these commissions should be returned by advisers to the investment companies they manage. It has been urged by some commentators that our proposed rule is at variance with these prior Commission positions. As we have shown above, p. 95, supra, however, our previous expression of views is not inconsistent with Securities Exchange Act Rule 19b–2.

[501] It has been suggested that, in order to justify Rule 19b–2, we must resolve the proper function and role of the third market. We agree that the scope of a central market system ultimately will require consideration of these issues. But, we are not required to resolve all facets of a problem at once; our accumulation of experience with the various rules we recently have proposed or adopted concerning market structure will enable us to consider issues such as these in their proper perspective and with an adequate background. As the House Study, supra n. 4, noted in this context:

"It would be unrealistic to assume that these objectives [the establishment of a central market system] might be achieved in a single step, through legislative fiat or administrative directive. In this sense the Subcommittee concurs with the Commission in its stress on the value of permitting markets to evolve, provided they do so in the general direction intended, and without market distortions detrimental to the public interest."

Id., at p. 123.

[502] See n. 33, supra.

[503] We are not persuaded that all of the adherents of unregulated exchange membership either want or would benefit if our determination were to sanction such a development. If all qualifications for exchange membership were lifted, all exchanges—not just the few which do so now—might, for various reasons, feel compelled to accept institutions as members. The so-called "institutional members" of regional exchanges well might prefer to limit their membership to the two New York exchanges if that option were available; without any other basis to compete with these exchanges than the artificial methods that now exist (see p. 3926, supra), some regional exchanges might, in the long run, disband or severely contract their operations.

[504] See, e.g., Commission File No. S7–452, supra n. 16, written comments of Channing Management Corp. (Oct. 3, 1972) at pp. 9–10; American Insurance Association (Oct. 12, 1972) at p. 8, Antitrust Division of the Department of Justice (Oct. 3, 1972), at p. 9, et seq.

[505] See pp. 3903–3906, supra.

[506] See pp. 3925–3926, supra.

[507] See p. 3905, supra.

[508] See pp. 3905, 3914–3916, supra.

[509] Unsafe and Unsound Study, supra, n. 87, at pp. 13–20.

[510] See p. 3905, supra.

[511] See n. 337, supra.

[512] See Commission File No. S7–452, n. 16, supra, written comments of PBW Stock Exchange, Inc. (Sept. 8, 1972); Antitrust Division of the U.S. Department of Justice (Oct. 3, 1972).

[513] See Policy Statement, supra n. 1, at p. 21.

[514] In addition to our own authority, see Commission File No. 4–147, supra n. 84, Statement of the Antitrust Division of the U.S. Department of Justice, Appendix B (Dec. 1, 1971).

[515] See Commission File No. S7–452, supra n. 16, written comments of American Insurance Association (Oct 12, 1972); American Life Convention-Life Insurance Association of America (Oct 3, 1972); The Travelers Insurance Company (Sept. 29, 1972).

[516] See p. 3923, supra.

[517] *See* Commission File No. S7–452, supra n. 16, written comments of PBW Stock Exchange, Inc. (Sept. 8, 1972).

[518] It is not possible to cure all ills that may exist in one fell swoop. See n. 501, supra.

[519] The exchanges also have adopted rules permitting a discount of 40 percent from the minimum commission rate for qualifying nonmember broker-dealers, provided they and their parents are primarily engaged in the securities business and agree that the discount will be retained by the nonmember broker-dealer free from any rebate to or for the benefit of any customer. (See, e.g., Rule 385, rules of the New York Stock Exchange, 2 CCH, New York Stock Exchange Guide Para. 2385, at p. 3642; Rule 399, rules of the American Stock Exchange, 2 CCH, American Stock Exchange Guide Para. 9429, at p. 2643; Rule 4, section 2(b), rules of the Pacific Coast Stock Exchange, CCH Pacific Coast Stock Exchange Guide Para. 3933, at p. 3088; Chapter XXXI, section 1, rules of the Boston Stock Exchange, CCH Boston Stock Exhange Guide Para. 2290, at p. 2277. The access provision of the PBW Stock Exchange does not contain such a primary purpose requirement or parent test but provides that "this discount shall not apply to an affiliate of a bank, insurance company, pension trust, investment company complex, or manager of a pool of invested capital; * * *" Article XX, section 2(h), Constitution of the PBW Stock Exchange, CCH PBW Stock Exchange Guide Para. 1477, at p. 1122.

The access provision of the Midwest Stock Exchange contains a primary purpose requirement which does not relate to the parent. Article XXVIII, Rule 2(1), rules of the Midwest Stock Exchange, CCH Midwest Stock Exchange Guide Para. 2552, at p. 2131.) It is expected that following the adoption of Rule 19b–2 all exchanges will amend their access provisions to the extent necessary to eliminate any parent or related test.

It should be noted, however, that nonmember access was adopted by the exchanges, at the Commission's request, to provide an opportunity for broker-dealers which are not exchange members to earn reasonable compensation for executing orders in listed securities. Accordingly, it affords a professional discount to nonmember broker-dealers on agency orders of public customers. It was never intended to enable any individual customer to obtain a commission rate advantage; thus, it would be inconsistent with the objectives of the access provision for a broker-dealer to receive a nonmember discount in respect of any order executed by it for its own account or any account of an affiliated person, within the meaning of Rule 19b–2. Accordingly, while Rule 19b–2 does not directly address itself to the subject of qualifications for nonmember access, it is obvious that appropriate amendments will be required in the nonmember access rules of exchanges to limit the availability of the nonmember discount to agency orders for unaffiliated public customers.

[520] 373 U.S. 341 (1963). Cf. Ricci v. Chicago Mercantile Exchange, No. 71–858 (U.S. Sup. Ct., Jan. 9, 1973).

[521] As the Court noted:

"[T]he Commission's lack of jurisdiction over particular applications of exchange rules means that the question of antitrust exemption does not involve any problem of conflict or coextensiveness of coverage with the agency's regulatory power * * *. The issue [here] is only that of the extent to which the character and objectives of exchange self-regulation contemplated by the Securities Exchange Act are incompatible with the maintenance of an antitrust action."

373 U.S. at 358.

[522] 373 U.S. at pp. 364–366.

[523] See n. 480, supra; 373 U.S. at p. 358 n. 12.

[524] No. 71–858 (U.S. Sup. Ct., Jan. 9, 1973), Slip op. at pp. 11–13.

[525] 373 U.S. at p. 357.

[526] See pp. 3926–3927, infra.

[527] See pp. 3906–3909, supra.

[528] See, e.g., Harwell v. Growth Indus., 451 F. 2d 240 (C.A. 5, 1971), opinion modified and rehearing denied, 459 F. 2d 401 (C.A. 5, 1972), certiorari denied, 41 U.S.L.W. 3179 (U.S., No. 72–58) (Oct. 10, 1972); Thill v. New York Stock Exchange, 433 F. 2d 264 (C.A. 7, 1970), certiorari denied, 401 U.S. 994 (1971).

[529] House Study, supra n. 4, at pp. 155–168; Baxter, NYSE Fixed Commission Rates: A Private Cartel Goes Public, 22 Stan. L. Rev. 675 (1970); Nerenberg, Application of the Antitrust Laws to the Securities Field, 16 Wes. Res. L. Rev. 131 (1964); Johnson, Application of Antitrust Laws to the Securities Industry, 20 S.W.L.J. 536 (1966).

[530] See cases cited at n. 489, supra. Cf. Ricci v. Chicago Mercantile Exchange, No. 71–858 (U.S. Sup. Ct. Jan. 9, 1973), where the Court stated that agency consideration of issues common to an antitrust suit "would obviate any necessity for the antitrust court to relitigate the issues actually disposed of by the agency decision." Slip op. at p. 17 (emphasis supplied).

[531] This issue explicitly was left open in Ricci v. Chicago Mercantile Exchange, supra n. 529, concurring opinion of Berger, C.J.

[532] Silver v. New York Stock Exchange, 373 U.S. 341, 357.

[533] If the antitrust laws supersede our authority to regulate the Nation's exchanges, the Securities Exchange Act cannot "work."

[534] See 5 U.S.C. 701, et seq.

review of agency action,[535] and that re-

[535] 5 U.S.C. 702, 704. See Robertson v. Federal Trade Commission, 415 F. 2d 49 55 (C.A. 4, 1969); Rettinger v. Federal Trade Commission, 392 F. 2d 454, 457 (C.A. 2, 1968).

[536] See p. 3925, supra.

[537] But see Harwell v. Growth Indus. supra n. 528.

[538] 373 U.S. at p. 360.

[539] Id., at p. 361.

[540] No. 71-858 (U.S. Sup. Ct., Jan. 9, 1973).

[541] See sections 11(a) and 19(b) of the Act. Section 19(b) sets as a standard for Commission action or review and modification of exchange rules, the requirement that we find changes in rules to be:

"Necessary or appropriate for the protection of investors or to insure fair dealing in securities traded in upon such exchange or to insure fair administration of such exchange * * *".

Since the Act is entitled to a broad construction comporting with the remedial purposes of this legislation (see pp. 54-69, supra), we do not believe the Supreme Court in Silver intended to, or did, rewrite these dual tests for Commission action, and the Ricci decision confirms this analysis. See n. 489, supra.

[542] See pp. 3903-3909, supra.

[543] See pp. 3914-3924, supra.

[544] See discussion supra, pp. 3906-3909.

[545] See discussion supra, p. 3912.

[546] See discussion supra, pp. 3906-3909.

[547] 78 Cong. Rec. 7696 (1934).

[548] 78 Cong. Rec. 8091 (1934).

[549] See pp. 3909-3911, supra.

[550] See p. 3913, supra.

[551] See, e.g., Commission on Organization of the Executive Branch of the Government, Task Force Report on Legal Services and Procedures (1955), p. 189; Committee on Administrative Procedure, Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess. (1941), at pp. 39-40; Cary, Administrative Agencies and the Securities and Exchange Commission, 29 Law and Contemp. Probs. 653, 660 (1964); Von Mehren and McCarroll, The Proxy Rules: A Case Study in the Administrative Process, 29 Law and Contemp. Probs. 728, 748 (1964).

[552] Landis, The Administrative Process, 75-76 (1938).

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