(3) Invite any other persons affected to attend the conference as he deems appropriate, and,

(4) Issue a notice of the date the conference is to be held to the appellant and all other persons affected invited by the district conferee to participate.

(b) Where a conference on an appeal has been granted, the district conferee shall, when administratively feasible, within 30 days after such conference, grant or deny such appeal in whole or in part.

(c) The district conferee shall serve the appellant and any other person affected who was invited by the district conferee to participate in the conference (or conferences) with notice of the decision rendered by such conferee as a result of such conference (or conferences).

PAR. 12. Section 401.605 is revised to read as follows:

§ 401.605 Effect of decision upon appeal.

A decision of a district conferee pursuant to § 401.604 shall be deemed a final action by the Internal Revenue Service and may be appealed to the Cost of Living Council, Pay Board, or Price Commission, as appropriate, to the extent an appeal is otherwise allowable under the provisions of this title.

PAR. 13. Section 401.606 is revised to read as follows:

§ 401.606 Right to reconsideration.

Any person who is—

(a) A person aggrieved (as defined in § 401.2) by a ruling, or

(b) Subject to any provision of a ruling,

may request a reconsideration of a ruling issued by the office of the chief counsel (Stabilization Division) after March 31, 1972, in the manner set forth in this subpart. A person is, for the purposes of paragraph (b) of this section, subject to such a provision only if the ruling was issued to him, the action is adverse to him, and he has a substantial pecuniary interest. A principal referred to in paragraph (b) of § 401.502 may not make a request for reconsideration pursuant to the provisions of this subpart with respect to the subject matter of the notice of violation served on him. Any request for reconsideration not otherwise in accordance with this subpart, may be rejected by the office of the chief counsel (Stabilization Division).

PAR. 14. Section 401.607 is revised to read as follows:

§ 401.607 Time and place for filing request for reconsideration.

Any request for reconsideration referred to in § 401.606 shall be filed within 30 days of the service of the ruling referred to in such section with the Office of the Chief Counsel for the Internal Revenue Service, Attention: Chief, Appeals and Review Branch, Stabilization Division, CC:S:A, Washington, D.C. 20224.

PAR. 15. Section 401.609 is revised to read as follows:

§ 401.609 Action by Office of the Chief Counsel on reconsideration.

The Office of the Chief Counsel (Stabilization Division) shall process and decide a request for reconsideration pursuant to the procedural rules of this section:

(a) When administratively feasible, within 30 days after the filing of any request for reconsideration in accordance with this subpart, the Stabilization Division shall:

(1) Grant or deny such request in whole or in part, or

(2) If a conference has been requested and granted, conduct such conference under such conditions as it deems appropriate,

(3) Invite any other persons affected to attend the conference as it deems appropriate, and

(4) Issue a notice of the date the conference is to be held to the person seeking a reconsideration and all other persons affected who are invited by the Division to participate.

(b) Where a conference on a request for reconsideration has been granted, the Stabilization Division shall, when administratively feasible, within 30 days after such conference, grant or deny such request in whole or in part.

(c) The Stabilization Division shall serve the person seeking a reconsideration and any other person affected who was invited by such Division to participate in the conference (or conferences) with notice of the decision rendered by such Division as a result of such conference (or conferences).

PAR. 16. Section 401.610 is revised to read as follows:

§ 401.610 Effect of a ruling by the Stabilization Division.

A ruling issued by the Stabilization Division or a decision of the Stabilization Division pursuant to § 401.609 shall be deemed a final action by the Office of the Chief Counsel (Stabilization Division) for the Internal Revenue Service and may be appealed to the Cost of Living Council, Pay Board, or Price Commission, as appropriate, to the extent an appeal is otherwise allowable under the provisions of this title.

PAR. 17. Section 401.611 is revised to read as follows:

§ 401.611 Copy of appeal required when appeals are taken to the Council, Board, or Commission.

Any person qualified under § 401.606 to request a reconsideration may file an appeal with the Cost of Living Council, Pay Board, or Price Commission without seeking a reconsideration or after his request for reconsideration is denied in whole or in part. If an appeal is filed without the seeking of a reconsideration, the right to such reconsideration is forfeited. A copy of an appeal shall in all cases be sent to the Office of the Chief Counsel for the Internal Revenue Service, Attention: Chief, Appeals and Review Branch, Stabilization Division, CC:S:A, Washington, D.C. 20224.

Because of the need for immediate guidance from the Internal Revenue Service with respect to the subject matter of this regulation, it is found impracticable to issue such regulation with notice and public procedure thereon under section 553(b) of Title 5 of the United States Code or subject to the effective date limitation of section 553(d) of such title.

(Economic Stabilization Act of 1970 as amended, Public Law No. 91-379; 84 Stat. 799; Public Law No. 91-558, 84 Stat. 1468; Public Law No. 92-8, 85 Stat. 13; Public Law No. 92-15, 85 Stat. 38; Public Law No. 92-210, 85 Stat. 743; Executive Order No. 11,640, 37 F.R. 1213 (1972), Cost of Living Council Order No. 8, 37 F.R. 2727 (1972), Pay Board Order No. 4, 37 F.R. 3792 (1972), Price Commission Order No. 2, 37 F.R. 3212 (1972))

JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

LEE H. HENKEL, JR.,
Chief Counsel for the Internal Revenue Service.

[FR Doc.72-14570 Filed 8-25-72;8:50 am]

Title 7—AGRICULTURE

Chapter II—Food and Nutrition Service, Department of Agriculture

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Appendix—Second Apportionment of School Breakfast Program Funds Pursuant to Child Nutrition Act of 1966, Fiscal Year 1972

Pursuant to section 4 of the Child Nutrition Act of 1966, Public Law 89-642, 80 Stat. 886, food assistance funds available for the fiscal year ending June 30, 1972, are reapportioned among the States as follows:

State	Total apportionment	State agency	Withheld for private schools
Alabama	$664,977	$661,260	$3,717
Alaska	59,222	59,222	----------
Arizona	236,479	236,479	----------
Arkansas	403,488	400,350	3,138
California	783,275	783,275	----------
Colorado	225,986	215,718	10,268
Connecticut	100,801	100,801	----------
Delaware	85,916	85,916	----------
District of Columbia	99,490	99,490	----------
Florida	821,665	821,665	----------
Georgia	635,087	635,087	----------
Guam	37,476	37,476	----------
Hawaii	46,427	41,795	4,632
Idaho	4,833	3,000	1,833
Illinois	701,896	701,896	----------
Indiana	269,657	269,657	----------
Iowa	177,570	171,259	6,311
Kansas	202,466	202,466	----------
Kentucky	591,804	591,804	----------
Louisiana	767,000	767,000	----------
Maine	151,000	141,953	9,047
Maryland	320,482	320,482	----------
Massachusetts	225,172	225,172	----------
Michigan	515,020	509,616	5,404
Minnesota	348,004	348,004	----------
Mississippi	563,089	563,089	----------
Missouri	210,049	210,049	----------
Montana	53,480	50,631	2,849
Nebraska	150,352	131,663	18,689
Nevada	19,190	19,163	27
New Hampshire	77,813	77,813	----------
New Jersey	326,876	311,244	15,632
New Mexico	217,440	217,440	----------

State	Total apportionment	State agency	Withheld for private schools
New York	$1,283,250	$1,283,250	
North Carolina	809,132	809,132	
North Dakota	52,384	45,105	$7,279
Ohio	784,332	755,707	28,625
Oklahoma	340,900	340,900	
Oregon	127,884	127,884	
Pennsylvania	779,019	704,807	74,212
Puerto Rico	285,015	285,015	
Rhode Island	91,593	91,593	
South Carolina	591,799	588,659	3,140
South Dakota	114,101	114,101	
Tennessee	645,482	639,197	6,285
Texas	1,013,634	1,001,418	12,216
Utah	85,457	85,457	
Vermont	51,009	51,009	
Virginia	405,912	404,366	1,546
Virgin Islands	10,304	10,304	
Washington	287,732	284,208	3,524
West Virginia	288,720	285,470	3,250
Wisconsin	300,109	273,174	26,935
Wyoming	29,545	29,545	
Samoa, American	29,205	29,205	
Total	18,500,000	18,251,441	248,559

(Secs. 2, 4, 6, and 8 through 16, 80 Stat. 885–890; 42 U.S.C. 1771, 1773, 1775, 1777–1785)

Dated: August 18, 1972.

HOWARD P. DAVIS,
Acting Administrator.

[FR Doc.72-14503 Filed 8-25-72;8:45 am]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Valencia Orange Reg. 405, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Valencia 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 Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 908.705 (Valencia Orange Regulation 405, 37 F.R. 16597) during the period August 18, through August 24, 1972, are hereby amended to read as follows:

§ 908.705 Valencia Orange Regulation 405.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 318,000 cartons;

(ii) District 2: 332,000 cartons;

* * * * *

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

Dated: August 23, 1972.

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

[FR Doc.72-14589 Filed 8-25-72;8:52 am]

[Lemon Reg. 548]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.848 Lemon Regulation 548.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon 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 lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) 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 when 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 lemons 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 during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, 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 lemons; 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 August 22, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period August 27 through September 2, 1972, is hereby fixed at 200,000 cartons.

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

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

Dated: August 23, 1972.

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

[FR Doc.72-14636 Filed 8-25-72;8:52 am]

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment to be made effective pursuant to the Potato Research and Promotion Plan (37 F.R. 5008) was published in the FEDERAL REGISTER of August 1, 1972 (37 F.R. 15380). This program is effective under the Potato Research and Promotion Act (Title III of Public Law 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041). The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than 15 days following its publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the National Potato Promotion Board, established pursuant to the aforesaid Plan, it is hereby found and determined that:

§ 1207.401 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending June 30, 1973, by the National Potato Promotion Board for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to $1,900,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by him as the designated handler thereof during the period beginning the effective date hereof through the remainder of said fiscal period.

(c) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the requirements of this section should be made applicable to as many shipments as possible during the fiscal period in order to generate maximum funds to effectuate the declared policy of the act, (2) assessment income is needed as soon as possible to cover the initial costs of operation under the program and minimize finance charges on borrowed capital, (3) notice that consideration was being given to the approval of this section was published in the August 1, 1972, FEDERAL REGISTER (37 F.R. 15380), and (4) information regarding the provisions of this section is being made available to producers and handlers.

(Title III, Public Law 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627)

Dated: August 23, 1972, to become effective September 15, 1972.

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

[FR Doc.72-14635 Filed 8-25-72;8:52 am]

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Rules and Regulations

Notice of rule making regarding proposed rules and regulations to be made effective pursuant to the Potato Research and Promotion Plan (37 F.R. 5008) was published in the FEDERAL REGISTER of August 1, 1972 (37 F.R. 15381). This Plan is effective under the Potato Research and Promotion Act (Title III of Public Law 91-670; 84 Stat. 2041).

The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than 15 days following its publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the National Potato Promotion Board, established pursuant to the aforesaid Plan, the following administrative rules and regulations are hereby approved as published in the notice except for the addition of clarifying language in § 1207.512, in paragraphs (a) (2), (5), and (8).

These rules and regulations shall become effective on September 15, 1972, and will remain in effect until amended or terminated. They include a requirement for the payment of an assessment to the Board by the designated handler per hundredweight of potatoes handled on and after September 15, 1972. (The rate approved for the fiscal period ending June 30, 1973, is 1 cent per hundredweight.)

DEFINITIONS

Sec.
1207.500 Definitions.

GENERAL

1207.501 Communications.
1207.503 Nominations.
1207.505 Procedure.
1207.506 Policy.
1207.507 Administrative Committee.

ASSESSMENTS

1207.510 Levy of assessment.
1207.511 Determination of assessable quantity.
1207.512 Designated handler.
1207.513 Payment of assessments.
1207.514 Refunds.
1207.515 Safeguards.

RECORDS

1207.532 Retention period for records.
1207.533 Availability of records.

CONFIDENTIAL INFORMATION

1207.540 Confidential books, records, and reports.
1207.545 Right of the Secretary.
1207.546 Personal liability.

AUTHORITY: The provisions of this subpart issued under Title III of Public Law 91-670, 91st Congress, approved January 11, 1971, 84 Stat. 2041.

DEFINITIONS

§ 1207.500 Definitions.

(a) *Plan.* "Plan" means the Potato Research and Promotion Plan issued by the Secretary of Agriculture pursuant to the act.

(b) *Board.* "Board" means the National Potato Promotion Board, established pursuant to § 1207.320 of the plan.

(c) *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown by producers in the 48 contiguous States of the United States.

(d) *Producer.* "Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

(e) *Handle.* "Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

(f) *Handler.* "Handler" means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

(g) *Person.* "Person" means any individual, partnership, corporation, association or other entity.

(h) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(i) *Processor.* "Processor" means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

GENERAL

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, Suite 8, 1313 Tremont Street, Denver, CO 80204.

§ 1207.503 Nominations.

(a) Pursuant to § 1207.322 of the plan, the Board shall hold or cause to be held a meeting or meetings of producers in the producing sections or States prior to March 1 of each year to nominate members for the Board.

(b) Such meetings shall be well publicized with notice given to producers and the Secretary at least 10 days prior to the meeting.

§ 1207.505 Procedure.

The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, which are hereby approved.

§ 1207.506 Policy.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for potatoes and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the potato industry and no undue preference shall be given to any of the various industry segments.

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: *Provided*, That such committee shall include the President; three Vice-Presidents; Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to § 1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to § 1207.513(c).

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of and in the name of the Board in all administrative matters.

ASSESSMENTS

§ 1207.510 Levy of assessment.

During the effective period of this subpart, an assessment shall be levied on all potatoes handled for ultimate consumption as human food and seed. Potatoes used for other nonhuman food purposes, including starch, are exempted from assessment but subject to the safeguard provisions of § 1207.515 of this subpart. No more than one such assessment shall be made on any potatoes. No assessments shall be levied on potatoes grown by producers of less than 5 acres of potatoes.

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes handled shall be paid by the designated handler as hereinafter set forth:

(a) Unless otherwise provided in paragraphs (b) and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. However, an assessment is due on any seed potatoes (whether certified or not) which are sold or otherwise handled by the producer or other handler.

(b) Any person who handles potatoes for a producer thereof under oral or written contract or agreement providing for the sale thereof shall be the designated handler for such potatoes, notwithstanding the fact that the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes: *Provided*, That such producer-handler may elect to pay the assessments on his potatoes on behalf of the designated handler.

Examples. A cooperative marketing association, or other person, who makes an accounting to the producer, or pays the proceeds of the sale to the producer would be the designated handler responsible for the assessment.

(c) Any processor who purchases potatoes from the producer thereof shall be the designated handler even though the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes: *Provided*, That the producer may elect to pay the assessment on his potatoes on behalf of the designated handler.

§ 1207.513 Payment of assessments.

(a) *Responsibility for payment.* The designated handler is responsible for payment of assessment. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable by the handler to the Board. Failure of the handler to collect or deduct such assessment does not relieve the handler of his obligation to remit the assessment to the Board.

(1) The assessment shall become payable at the time a determination of assessible potatoes is made in the normal handling process, pursuant to § 1207.511.

(b) *Payment direct to the Board.* (1) Except as provided in paragraph (c) of this section, each designated handler shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

(2) All designated handler reports shall contain the following information:

(i) Date of report (which is also date of payment to the Board);

(ii) Period covered by report;

(iii) Total quantity of potatoes determined as assessable during the reporting period, pursuant to § 1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such settlement sheets contain all the information listed above.

(ii) The words "final report" shall be shown on the last report at the close of his marketing season or at the end of

each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(c) *Payment through cooperating agency.* The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of § 1207.352 *Confidential treatment*, of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

§ 1207.514 Refunds.

Any potato producer from whom an assessment has been collected or withheld may obtain a refund only by following the procedure prescribed in this section.

(a) *Application form.* A producer shall obtain a refund form from the Board by written request which shall bear the producer's signature.

(b) *Submission of refund application to Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment was collected from such producer or withheld from his account by a designated handler. The refund application shall show (1) producer's name and address, (2) handler's or handlers' name(s) and address(es); (3) the number of hundredweight on which refund is requested; (4) date or inclusive dates on which assessments were paid; and (5) the producer's signature. Where more than one producer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case the refund application shall show the names addresses and proportionate shares of such producers and the signature of each.

(c) *Proof of payment of assessment.* The receipt given to the producer by the handler, a copy thereof, or such other evidence satisfactory to the Board, shall accompany the producer's refund application. Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the producer. For joint applications, the remittance shall be made payable jointly to all eligible producers signing the refund application form.

§ 1207.515 Safeguards.

The Board may require reports by designated handlers on the handling and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

RECORDS

§ 1207.532 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability: (a) One copy of each report made to the Board; and (b) such records as are necessary to verify such reports.

§ 1207.533 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the plan.

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

It is hereby found that good cause exists for not postponing the effective date of these rules and regulations beyond September 15, 1972, in that (1) it is necessary to place these rules and regulations in effect prior to the handling of the fall potato crop which begins on or about the effective date hereof, so that this program may begin operations, (2) notice hereof has been given by publication in the FEDERAL REGISTER of August 1, 1972 (37 F.R. 15381) and (3) information regarding these rules and regulations is being made available to producers and handlers.

(Title III, Public Law 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627)

Dated August 23, 1972, to become effective September 15, 1972.

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

[FR Doc.72-14634 Filed 8-25-72;8:52 am]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

PART 9—PUBLIC RECORDS

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Restructuring of Facility License Application Review and Hearing Processes

On July 28, 1972, F.R. Doc. 72-11730 was published in the FEDERAL REGISTER (37 F.R. 15127) amending the Atomic Energy Commission's regulations in 10 CFR Parts 2, 9, and 50 to restructure the Commission's facility license application review and hearing processes and make other changes. The text of the first sentence in paragraph 11 of the statement of considerations (p. 15128), the text of section VId) in paragraph 45 of the notice of rule making (p. 15142), and the text of the prefatory language in § 2.790 (a) in paragraph 37 (p. 15137) in F.R. Doc. 72-11730 are corrected to read as follows:

11. The provision in Appendix A of 10 CFR Part 2 to the effect that it is expected that ordinarily a board will render its initial decision within 45 days after receipt of proposed findings of fact and conclusions of law in a contested case and 15 days after such receipt in an uncontested case has been changed to indicate that the expected periods will be 30 days and 15 days, respectively.

VI. POSTHEARING PROCEEDINGS, INCLUDING THE INITIAL DECISION

* * * * *

(d) It is expected that ordinarily a board will render its initial decision within 30 days after its receipt of proposed findings of fact and conclusions of law filed by the parties in a contested case and within 15 days after

receipt of such proposed findings and conclusions in an uncontested case.

* * * * *

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final AEC records and documents,[10] including but not limited to correspondence to and from the AEC, regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rule making proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying in the AEC Public Document Room, except for:

* * * * *

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 21st day of August 1972.

For the Atomic Energy Commission.

W. B. McCool,
Secretary of the Commission.

[FR Doc.72-14467 Filed 8-25-72;8:45 am]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 7]

PART 123—DISASTER LOANS

Purposes of Loans; Correction

The document (F.R. Doc. 72-12726) amending Part 123 (Revision 7), published in the Federal Register on August 12, 1972, at 37 F.R. 16387, is corrected by changing "Amendment 1" to read "Amendment 2."

Anthony S. Stasio,
Deputy Associate Administrator for Financial Assistance.

[FR Doc.72-14549 Filed 8-25-72;8:49 am]

Chapter III—Economic Development Administration, Department of Commerce

PART 302—DESIGNATION OF AREAS

Miscellaneous Amendments

Correction

In F.R. Doc. 72-14289 appearing on page 16933 in the issue for Wednesday, August 23, 1972, make the following changes:

1. Section 302.20(a)(2) should read as follows:

(2) Those areas qualified in accordance with § 302.2(e) subsequent to August 5, 1971, and eligible only for assistance under Title I of the Act shall not be required to file an Overall Economic Development Program.

2. Section 302.20(b) should read as follows:

(b) Any area, other than those areas qualified in accordance with § 302.2 (d) and (e), which does not submit an acceptable OEDP within 6 months after notification of its eligibility for designation shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for good cause;

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-SW-42]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate a 700-foot transition area at DeQueen, Ark.

On July 11, 1972, a notice of proposed rule making was published in the Federal Register (37 F.R. 13558) stating the Federal Aviation Administration proposed to designate a transition area at DeQueen, Ark.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 9, 1972, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the following transition area is added:

DeQueen, Ark.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Sevier County Airport (latitude 34°02'44" N., longitude 94°23'58" W.) and within 3.5 miles each side of the 269° bearing from the DeQueen NDB (latitude 34°02'39" N., longitude 94°23'59" W.) extending from the 5-mile radius area to a point 10 miles west of the NDB.

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

Issued in Fort Worth, Tex., on August 18, 1972.

R. V. Reynolds,
Acting Director, Southwest Region.

[FR Doc.72-14519 Filed 8-25-72;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-2258]

PART 13—PROHIBITED TRADE PRACTICES

Cavalier Carpets, Inc., and M. W. Moore, Jr.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) (Cease and desist order, Cavalier Carpets, Inc., et al., Dalton, Ga., Docket No. C-2258, July 21, 1972)

In the Matter of Cavalier Carpets, Inc., a Corporation, and M. W. Moore, Jr., Individually and as an Officer of Said Corporation

Consent order requiring a Dalton, Ga., manufacturer of carpets and rugs, among other things, to cease manufacturing for sale, selling, transporting, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued or amended under the provisions of the Flammable Fabrics Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Cavalier Carpets, Inc., a corporation, its successors and assigns, and its officers, and respondent, M. W. Moore, Jr., individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting, or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce", "product", "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the

[10] Such records and documents do not include handwritten notes and drafts.

products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since July 20, 1971, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: July 21, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-14516 Filed 8-25-72;8:46 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 34-9717]

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

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Presentation of Records, Reports, and Forms for Reports on Stabilizing Activities

The Securities and Exchange Commission today announced the adoption of amendments to Rule 17a–2 (17 CFR 240.17a–2) and Form X–17A–1 (17 CFR 249.717) under the Securities Exchange Act of 1934 (the Act). The amendments are adopted under sections 10(b), 17(a), and 23(a) of the Act.

On May 24, 1972, in Securities Exchange Act Release No. 9605 and in the FEDERAL REGISTER for June 1, 1972, at 37 F.R. 10960, the Commission proposed to amend Rule 17a–2 and Form X–17A–1. It has considered the comments and suggestions received in response to that proposal and now amends that rule and form as set forth below.

Rule 17–a–2 provides for the filing of reports on Form X–17A–1 by all members of an underwriting syndicate or group engaged in a distribution of securities if stabilizing purchases have been made to facilitate the distribution. The purpose of such reports is to inform the Commission whether (1) stabilizing transactions on behalf of the syndicate or group were effected in conformity with the restrictions and limitations of Rule 10b–7 (17 CFR 240.10b–7) under the Act and therefore properly come within exception (8) of Rule 10b–6 (17 CFR 240.10b–6) which permits "stabilizing transactions not in violation of Rule 10b–7" and (2) whether any other activity by any member of the syndicate violated the prohibitions of Rule 10b–6 against the purchase of securities of the same class and series of those being distributed.

As is currently provided in Rule 17a–2 and Form X–17A–1, the member of the syndicate which makes stabilizing purchases for the syndicate account is required to file separate reports on Form X–17A–1 respecting syndicate transactions in the stabilized and offered securities and in any rights to subscribe for them. These must be filed on each business day following the day on which such transactions occur. Such reports are filed in its capacity "as manager." As to the other members of the syndicate for whose account stabilizing purchases were made, each of them is merely required to file one report on Form X–17A–1 "not as manager," reflecting all of his transactions in the same securities within a specified period ending with the termination of stabilization. This report, "not as manager," must be filed within 5 business days after such termination.

In a recent survey conducted by the Commission into, among other things, the examination and processing of Form X–17A–1 reports, it has been ascertained that the separate, "not as manager" filing in connection with a given distribution casts an undue time consuming burden on the Commission's staff in the processing of these reports. Accordingly, in the interests of efficiency and expedition, the Commission is adopting a new paragraph (d)(5) of Rule 17a–2 and an amendment of paragraphs (d)(1) and (e) of the rule as well as of Instruction V of Form X–17A–1 which would require the "not as manager" reports to be made to the syndicate manager within the same period as they are now required under the rule to be filed; namely, within 5 business days after the termination of stabilization. In turn, under the amendments, the manager would have 15 business days after such termination to file with the Commission all of the "not as manager" reports, including its own "not as manager" report reflecting its transactions in the same securities during the prescribed period, other than its transactions for the syndicate account. The amended rule will also impose upon the managing underwriter the obligation to submit to the Commission in writing at the time it files all the "not as manager" reports with the Commission, a list of all syndicate or group members who are delinquent in filing their "not as manager" reports with such managing underwriter within 5 business days after the termination of stabilization.

Commission action. The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly sections 10(b), 17(a), and 23(a) thereof, and deeming it in the public interest and for the protection of investors, hereby amends Parts 240 and 249 of Chapter II of Title 17 of the Code of Federal Regulations by adopting amendments to §§ 240.17a–2 and 249.717 as set forth below, effective September 25, 1972.

Paragraphs (d) (1) and (5) and (e) of § 240.17a–2 are hereby amended to read as follows:

§ 240.17a–2 Presentation of records and reports of certain stabilizing activities.

* * * * *

(d) *Reports as manager.* Any person subject to this section who effects one or more stabilizing purchases for his sole account or for the account of a syndicate or group shall:

(1) Report to the Commission "as manager" on § 249.717 (Form X–17A–1) of this chapter, in duplicate original, not later than 3 business days following the day upon which the first stabilizing purchase was effected, all purchases, sales, and transfers, in the stabilized and offered securities, and if the offering is a rights offering, in the rights, during the period beginning on the ninth business

day prior to the first day upon which the offering was made or beginning on the business day prior to the day on which the first stabilizing purchase was effected, whichever date is earlier, and ending on the day upon which the first stabilizing purchase was effected: *Provided, however,* That in the case of securities offered pursuant to an effective registration statement under the Securities Act of 1933 the distribution shall not be deemed to commence for purposes of this subparagraph (1) prior to the effective date of the registration statement; and

* * * * *

(5) Such person shall require from all other members of the syndicate or group, as a condition for becoming and remaining such members, a commitment to file with such person the reports in duplicate original, "not as manager," on § 249.717 (Form X–17A–1) of this chapter in accordance with the requirements of paragraph (e) of this section; and such person shall, together with such person's own report, if any, "not as manager," file in duplicate original with the Commission each such report "not as manager" within 15 business days following the day upon which stabilizing was terminated. If, after making a reasonable effort to obtain all "not as manager" reports from syndicate or group members in accordance with his obligation under this section, the managing underwriter has not received all such reports from such syndicate or group members within the time prescribed by paragraph (e) of this section, the managing underwriter shall also submit to the Commission, in duplicate original, at the time the managing underwriter files the "not as manager" reports required by this paragraph, a list of all members of the syndicate or group who have not filed their "not as manager" reports with such managing underwriter in accordance with the requirements of paragraph (e) of this section.

(e) *Reports not as managers.* Any other person subject to this section who has a participation in an account for which a stabilizing purchase is effected (other than a person stabilizing for his sole account all of whose transactions are reported "as manager") shall, not later than 5 business days following the day upon which stabilizing was terminated, report to the Commission on § 249.717 (Form X–17A–1) of this chapter by transmission to the person who is required to report "as manager" pursuant to paragraph (d) of this section, all purchases, sales, and transfers in the stabilized and offered securities, and if the offering is a rights offering, in the rights, during the period beginning on the ninth business day prior to the first day upon which the offering was made or on the business day prior to the day upon which the first stabilizing purchase was effected, whichever date is earlier, and ending on the day when stabilizing was terminated: *Provided, however,* (1) That transactions reported "as manager" shall not again be reported "not as manager" and (2) That in the case of securities offered pursuant to an effective registration statement under the Securities Act of 1933 the distribution shall not be deemed to commence for purposes of this paragraph (e) prior to the effective date of the registration statement.

* * * * *

§ 249.717 [Amended]

Instruction V of § 249.717 (Form X–17A–1) is hereby amended to read as follows:

V. Instructions "Not as Manager": (a) A person reporting "not as manager" should file a single report in duplicate original on § 249.717 (Form X–17A–1) with the Commission by transmitting it through the person required to report "as manager" after stabilizing has terminated, and within 5 business days after such termination. (See "Period To Be Covered," paragraph III above.) (b) In item 1, immediately below these instructions, enter all of your agency transactions for the account of others during the "Period To Be Covered," and in item 3, on the other side of this form, enter all takedowns, purchases, sales, and transfers for your own account that were made during the "Period To Be Covered," and total columns C and H. (c) In item 2 indicate your net position at the opening of the first day of the "Period To Be Covered," usually the ninth business day prior to the offering date, and in item 4 indicate your net position at the end of the "Period To Be Covered," the termination of stabilization. (d) A separate report should be filed for each security offered or stabilized.

(Sec. 10(b), 48 Stat. 891, 15 U.S.C. 78j; sec. 17(a), 48 Stat. 897, as amended, 49 Stat. 1379, sec. 4, 52 Stat. 1076, sec. 5, 15 U.S.C 78q; sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 1379, sec. 8, 15 U.S.C. 78w)

By the Commission.

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

AUGUST 15, 1972.

[FR Doc. 72–14350 Filed 8–25–72;8:46 am]

[Release IC–7276]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Fair and Equitable Treatment of Series Type Investment Company Shareholders

On February 17, 1972, the Securities and Exchange Commission published notice that it had under consideration adoption of Rule 18f–2 (17 CFR 270.18f–2) under the Investment Company Act of 1940 (Act), (15 U.S.C. 80a–1 et seq.) as amended by the Investment Company Amendments Act of 1970 (1970 Act), Public Law 91–547 (84 Stat. 1421) (Investment Company Act Release No. 6998), (37 F.R. 4219). The rule would implement the provision of section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) which was added by the 1970 Act.

The notice invited all interested persons to comment on the proposed rule. The Commission has considered all the comments and suggestions received and has determined to adopt Rule 18f–2, with certain modifications, in the form set forth below.

The amendment made by the 1970 Act to section 18(f)(2) of the Act authorizes the Commission to adopt rules to require registered investment companies of the series type, as a requisite for taking action on a matter requiring shareholder authorization, to obtain the approval of each individual class or series of its stock which would be affected by such matter. The rule requires that any matter required by any provision of the Act, applicable State law, or otherwise to be submitted to the holders of the outstanding securities of a series company to be approved by holders of the majority of the outstanding voting securities of each affected series. The rule would not cover the submission to shareholders of independent public accountants, underwriting contracts, elections of directors, and matters in which interests of series are substantially identical. The rule has special provisions concerning advisory contracts and investment policies which provide individualized treatment for separate series.

Section 18(f)(1) (15 U.S.C. 80a–18(f)(1)) of the Act makes it unlawful for any registered open-end investment company to issue or sell any senior security. However, section 18(f)(2) excludes from the definition of senior security "a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series." Investment companies issuing such securities are commonly known as "series companies."[1] The individual series of such a company are, for all practical purposes, separate investment companies. Each series of stock represents a different group of stockholders with an interest in a segregated portfolio of securities. Shareholders of series companies generally have only one vote for each share held, and matters requiring shareholder action are generally decided by vote of a specified percentage of the outstanding securities of such companies, irrespective of series. In this connection, both the Senate and House Committee reports accompanying bills which eventually became the 1970 Act pointed out that

> * * * matters affecting the interest of holders of shares of a particular series are voted on by the holders of shares of all existing series and such vote may be controlled by the holders of an unaffected series. In effect, the shareholders of different series whose interest may be inconsistent are lumped together.[2]

[1] The rule does not apply to dual investment funds, since they are not series companies within the meaning of section 18(f)(2). Such funds typically issue two separate classes of securities, with one class entitled to receive all the net income from all of the investments of the fund and the other class entitled to receive all capital appreciation on such investments.

[2] Senate Rep. 91–184, 91st Cong., first session (1969), p. 38 (hereafter referred to as "Senate Report"); and House Rep. 91–1382, 91st Cong., second session (1970), p. 28 (hereafter referred to as "House Report").