Plaquemines, St. Bernard, St. Charles, St. Mary, and Terrebonne Parishes in Louisiana; Puerto Rico; Guam; and the Virgin Islands of the United States.

(Secs. 8, and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee).)

The foregoing amendment imposes restrictions that are necessary in order to prevent the interstate dissemination of the Mexican fruit fly. Therefore, they should be made effective promptly in order to accomplish their purpose in the public interest and to be of maximum benefit to the noninfested parishes of Louisiana. Also, it does not appear that additional information would be made available to the Department by public participation in rulemaking proceedings on the amendment.

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

NOTE.—The Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 5th day of April 1978.

W. F. HELMS,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 78-10315 Filed 4-13-78; 8:45 am]

[3410-02]

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

[Lemon Reg. 141; Lemon Reg. 140, Amendment 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period April 16-22, 1978, and increases the quantity of such lemons that may be so shipped during the period April 9-15, 1978. Such action is needed to provided for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective April 16, 1978, and the amendment is effective for the period April 9-15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under 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 this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on April 11, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons exceeding supply on 165's and 200's, 140's are also in high demand, with 235's and 115's and larger maintaining good levels.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.441 Lemon Regulation 141.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period April 16, 1978, through April 22, 1978, is established at 250,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

§ 910.440 [Amended].

2. Paragraph (a) of § 910.440 Lemon Regulation 140 (43 FR 13492) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period April 9, 1978, through April 15, 1978, is established at 275,000 cartons."

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

Dated: April 14, 1978.

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

[FR Doc. 78-10376 Filed 4-13-78; 12:39 pm]

[3410-02]

[Amdt. 3]

PART 967—CELERY GROWN IN FLORIDA

Subpart—Rules and Regulations

AMENDMENT REGARDING PROCEDURES FOR APPLYING FOR AND MAINTAINING NEW OR INCREASED ALLOTMENTS

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: A recent amendment of the Florida Celery Marketing Order provides a method for prospective producers to enter the celery industry and for existing producers to increase the size of their celery operations. This amendment specifies the procedures to implement such provisions.

EFFECTIVE DATE: April 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, phone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 149 and Order 967, both as amended, regulate the handling of celery grown in Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The rules were unanimously recommended by the Florida Celery Committee, which has been established under the order as being responsible for its local administration. The amended order (42 FR 32762) provides that the Secretary will issue rules or regulations which set forth the procedures to be followed in implementing the amended provisions.

Notice was published in the March 24 FEDERAL REGISTER (43 FR 12329) inviting written comment by April 6, 1978. None was received.

Findings. On the basis of all considerations it is found that this amendment will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice was given of the amendment set forth in this section by publication in the March 24 FEDERAL REGISTER, (2) prompt issuance of this amendment will be beneficial to the committee in administering the marketing order program and (3) no useful purpose will be served by postponing such issuance.

The amendment is as follows:

Amend Subpart—Rules and Regulations (7 CFR 967.100-967.166) by amending § 967.130 by adding a new subparagraph (4) to paragraph (a), and revising § 967.150, and § 967.151 to read as follows:

§ 967.130 Producer.

(a) * * *

; or (4) who or which has celery produced on his or its behalf which results in his or its ownership of the celery so produced.

* * * * *

§ 967.150 Marketable allotment.

(a) Producers holding Base Quantities shall register with the committee no later than May 1 of each year, on committee forms, to indicate their intentions and commitments to produce and market celery during the forthcoming season.

(b) As provided in § 967.38(f), Marketable Allotments shall be issued only to producers who have registered by May 1.

(c) Pursuant to § 967.36(b) no handler may handle any harvested celery when a Marketable Quantity is in effect, unless it is within the Marketable Allotment of a producer who has a Base Quantity pursuant to § 967.37 and such producer authorized the first handler thereof to purchase or otherwise handle it. By October 1 of each season, each producer shall notify the committee, by certification to it on committee forms, the number of crates of harvested celery to be handled by each such handler; and if there are subsequent changes in arrangements, the committee shall similarly be notified.

§ 967.151 Base quantities.

(a) Pursuant to § 967.37(d)(1) a reserve of Base Quantities shall be established annually beginning with the 1978-79 season. Each annual reserve shall amount to 6 percent of the total of Base Quantities in effect for the previous season.

(1) Applicants for Base Quantities must apply to the committee for a portion of the reserve not later than April 15 each year on such forms as may be prescribed by the committee. Such forms may include, but not necessarily be limited to, details on:

(i) Individual or firm name and address.

(ii) Location and size of farming operation.

(iii) Evidence of any firm and substantial arrangements or commitments, such as contractual arrangements with credit agencies, handlers, fertilizer dealers, management agencies and others for the production and marketing of celery, including reference to land, equipment, occupation, crops produced, and past experience in farming. Applicants for increases in Base Quantity also should provide substantial evidence of a capability to produce and market additional celery including specific references to celery sales relative to Marketable Allotments, production facilities and marketing facilities.

(b) Upon receipt of the completed application forms the committee shall consider and make determinations of the allocation of annual reserve Base Quantities among eligible applicants. Up to 50 percent of the total reserve shall be allocated among new producers. Such producers shall be those applicants who have no Base Quantity under the order, and any reserve Base Quantity distributed to such applicants shall be for the purpose of establishing new production and marketing of celery. Up to 50 percent of the total reserve shall be allocated among producer applicants with existing bases. In the event total applications in either category (new producers or producers with existing bases) exceed the amount of reserve Base Quantity authorized, the reserve in each category shall be apportioned among eligible applicants on a uniform basis. Any balance of the reserve which has not been allocated during a season shall not carry forward into the following season.

(c) As provided in § 967.37, the committee may provide for informal review in open meeting of the committee, or subcommittee thereof, of applicants' request for increases in Base Quantities or for Base Quantities. Such meeting shall be so conducted that an accurate record shall be made of relevant evidence presented. The record of such informal review, with references to relevant data and information presented, shall be retained by the committee and shall be subject to review by the Secretary.

(d) Each completed application form submitted to the committee shall be considered and determinations shall be made thereon. The committee shall notify each individual in writing of the action taken on the applications submitted. If the committee has not advised an individual of its decision by July 15, the individual may appeal to the Secretary for appropriate consideration thereof.

(e) To administer this part in accordance with its terms and provisons, a record of each Base Quantity and each Marketable Allotment shall be maintained by the committee.

(1) Whenever any Base Quantity or any Marketable Allotment is established for a producer, the committee shall so record and advise such producer on forms designated by it.

(2) No producer may transfer any Base Quantity or Marketable Allotment or obtain the same without first submitting a report containing all the details of the proposed transfer to the committee for record keeping and verification. Such reports shall be on forms prescribed by the committee and shall include, but not necessarily be limited to, and as applicable, Base Quantity or Marketable Allotment held, number of crates to be transferred and the specific period of time the transfer will be in effect, name and address of the producer to whom such Base Quantity or Marketable Allotment is being transferred, number of crates marketed in the representative period, qualifications as a producer and particulars on the sale and handling of the celery referable to the transferred Base Quantity or Marketable Allotment. The committee will only give consideration to requests for transfers of Base Quantity prior to the time the Marketable Quantity is recommended to the Secretary for a particular season, after which time requests for transfers of Marketable Allotments may be made to, and considered by the committee: *Provided*, That, (i) pursuant to § 967.36(b), transfers of Marketable Allotment may only be made to holders of Base Quantity; and (ii) requests for transfers of Base Quantities for any future season may be made at any time, except, pursuant to § 967.37, no Base Quantity or portion thereof issued to a new producer may be transferred within 3 years of the date of issuance.

(3) No handler may purchase harvested celery from, or handle harvested celery on behalf of, any producer, under a Base Quantity or Marketable Allotment transferred from one producer to another producer, unless such transfer was approved by the committee and recorded by it, or appropriate subcommittee, and the transferee has been so notified by the committee.

(4) No transfer of all or a portion of a Base Quantity that was originally issued by the committee to a producer in an amount greater than 37,500 crates shall (i) cause the elimination of such Base Quantity from the Marketable Quantity or from the total Base Quantities when the Uniform Percentage is calculated pursuant to

§ 967.38(a), nor (ii) change the applicability of such Uniform Percentage in establishing the Marketable Allotment with respect to the portion of his Base Quantity that was not transferred, regardless of whether or not such remainder exceeds 37,500 crates. The same Uniform Percentage shall also be applicable to the transferee-producer with respect to all or the portion of the transferred Base Quantity, regardless of whether or not the transferred Base Quantity or portion thereof is 37,500 crates or less, or, when added to the Base Quantity originally issued to such transferee-producer, does not aggregate more than 37,500 crates.

(f) Base Quantities not used for two consecutive seasons shall be declared invalid and cancelled if no bona fide effort is made to produce and sell celery thereunder. In determining what constitutes a "bona fide effort," the committee should require evidence of:

(1) Commitment of all resources necessary for the production and marketing of a celery crop.

(2) Registration with the committee annually, pursuant to § 967.37(f), to indicate intentions and commitments to produce and market celery.

(3) Production and sale of at least 50 percent of the producer's seasonal allotment of celery in which he has a proprietary interest, unless prevented from doing so by acts of God or other circumstances beyond his control.

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

Dated April 12, 1978, to become effective April 14, 1978.

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

[FR Doc. 78-10070 Filed 4-13-78; 8:45]

[3410-37]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

PART 2852—PROCESSED FRUITS, VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Canned Tomato Puree (Tomato Pulp)

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will change the grading standards for tomato puree (tomato pulp). This action was initiated at the request of the industry. The effect of the change will be to provide for electronic color meters as an alternative means of evaluating the color of the product.

EFFECTIVE DATE: May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dale C. Dunham, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6247.

SUPPLEMENTARY INFORMATION: Notice of a proposal to amend § 2852.5088 (formerly § 52.5088) of the United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) was published in the FEDERAL REGISTER of September 13, 1977 (42 FR 45932). Interested persons were allowed until December 31, 1977, in which to submit written data, views, or arguments concerning the proposed amendment.

Only two letters were received in response to the notice.

One letter of comment—from the Canners League of California—supports the proposed amendment.

The following issues were presented in the second letter of comment:

(1) A statement of general support of efforts to determine the color of tomato products by use of color meters.

(2) An objection that the limits described for the different color grades of tomato puree are ambiguous because the definitions appear to establish color limits on the basis of hue alone, disregarding chroma (saturation) or value (lightness).

(3) A concern regarding the lack of specific provisions which define the methodology and the effective calibration procedure to use when using electronic color meters. Also, it was pointed out that the appropriate equations which convert electronic color meter readings into score points are not included.

(4) A recommendation that whatever electronic color meters are used to evaluate the color of tomato puree be standardized to a "standard" white source (such as magnesium oxide) rather than to a changeable tomato product.

The USDA responds to these issues as follows:

The Department acknowledges that the defined limits set forth for the visual evaluation of the color of the different grades of tomato puree result in a single "blended" color or hue. However, such hue is the result of spinning different discs of specified hues (names for a group of chromatic colors such as red, yellow, green, blue, etc.), value (the apparent lightness or darkness of a color), and chroma (the strength or saturation of a color).

Too, the descriptive terminology used in the grade standards to further define the limits of color for the different grade (quality) classifications also incorporates consideration of the three dimensional concept of color space.

At this time, no one single methodology of sample presentation, data readout capabilities, instrument calibration or standardization, or color space reference is required and set forth for the instrumental evaluation of the color of tomato puree. This is because of Federal regulations which prohibit the adoption or use of any particular methodology or equipment to the discriminatory exclusion of similar means or equipment which are shown to provide equivalent results.

Manufacturers of various electronic color meters and other instruments utilize different approaches and methods to achieve a similar end. Therefore, the Department does not believe that it would be in the best interests of consumers, tomato products processors, or color meter manufacturers to stipulate one given methodology of instrument use, color meter, or color scale when sufficient and accurate date from other possible systems can provide equivalency of results.

Such a position, the Department believes, will provide both latitude and incentive to continue the efforts—among interested and concerned parties—to provide the means and methods to accurately and objectively evaluate the color of foodstuffs.

It is the intention of the USDA that, at this time, any satisfactory color measurement system may be used; provided such system is subject to review and approval of the USDA. The system used shall be convertible to an index or ranking that simply and easily conveys to the consumer a preceived color "goodness" of the product which, in the USDA grade standards, is expressed in terms of score points. Further, the perceived color must meet the requirements of the objective and descriptive provisions relating to the visually determined color evaluations set forth in the USDA grade standards for tomato puree.

A single specified calibration procedure is not set forth because calibration procedures differ somewhat, depending upon the instrument(s) involved. The Department prefers, therefore, when necessary, to consult and collaborate with the various concerned color instrument manufacturers to develop acceptable and approved calibration procedures which incorporate the capabilities and color scales of their particular instrument. After calibration, the electronic color meters must then provide suitable values or readouts that can be used to "grade the color" of tomato puree.

The appropriate equations used to convert electronic color meter read-

outs into score points are not included in the standards because the equations vary, again depending upon the color scale used and/or the instrumental readout values available.

It is anticipated that more electronic color meters will be developed and become available in the future. Accurate and reliable data from which conversion equations can be derived will have to be accumulated and analyzed. Since the resultant equations will be somewhat different for the different instruments, it would be easier and more efficient to perodically develop and release an official updated list of mathematical equations to all concerned parties—particularly processors and instrument manufacturers. Such a list would include all the mathematical equations that had been developed from reliable data up until the date of publication and would provide the approved equation for the given product (such as tomato puree or tomato juice) for the cited electronic color meter. Such equations might then be further disseminated by involved parties, or, possibly, actually programmed into the instruments to provide desired information or determinations.

Visual evaluations of the color of tomato puree are based on specific references which occupy the same approximate color space as the product. Thus, the data-gathering procedures used to establish the relationship between visual evaluations and electronic color meter measurements utilized color references that were quite similar to the product that was evaluated. In other words, a "red" reference was used to evaluate a "red" product. Such related color references helped to improve the accuracy of the color measurements.

Since judgements of the color of tomato puree involved, primarily, the dark red area of the spectrum, the USDA believes, at this time, that electronic color meters that have been "standardized" to this approximate area would be more reproducible and accurate in providing the values necessary to evaluate the color of tomato puree.

However, the standardizing of an appropriate color meter to a "standard" white tile or reference is not precluded in these standards. Any system, instrument, or standardizing procedure may be used; provided documented data are available to guarantee that sufficient accuracy and reproducibility exist to warrant approval by the USDA, and to permit the USDA to derive and establish the necessary mathematical equations.

Therefore, after careful consideration, the revisions proposed to the United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) on September 13, 1977, are adopted with minor editorial changes as set forth below.

Effective date. The revised United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) shall become effective May 1, 1978.

Subpart—United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) [1]

Sec.

AUTHORITY: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended; (7 U.S.C. 1622, 1624).

Subpart—United States Standards For Grades of Canned Tomato Puree (Tomato Pulp)

§ 2852.5081 Product description.

"Tomato Puree" (or "Tomato Pulp"), hereinafter referred to as "Tomato Puree," is the clean, sound, wholesome product as defined in the standard of Identity for Tomato Puree (Tomato Pulp) (21 CFR 155.192), issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 2852.5082 Concentration.

(a) The degree of concentration is not considered a factor of quality for the purposes of these standards, but tomato puree contains not less than 8 percent, but less than 24 percent of natural tomato soluble solids.

(b) The following designations of concentration may be used in connection with these standards for the applicable natural tomato soluble solids groups:

NATURAL TOMATO SOLUBLE SOLIDS

Extra heavy concentration.	15.0 pct or more, but less than 24 pct.
Heavy concentration.....	11.3 pct or more, but less than 15 pct.
Medium concentration	10.2 pct or more, but less than 11.3 pct.
Light concentration	8 pct or more, but less than 10.2 pct.

§ 2852.5083 Texture.

(a) *General.* Texture is the degree of fineness or coarseness of the product. Texture is classified when the product is diluted with water, when necessary, to between 8 percent and 9 percent, inclusive, of natural tomato soluble solids.

(b) *Kinds of texture.* (1) "Fine" texture means a smooth uniform finish.

(2) "Coarse" texture means a coarse slightly granular finish.

§ 2852.5084 Grades.

(a) "U.S. Grade A" is the quality of tomato puree that:

(1) Has a good flavor and odor;

(2) Has a good color;

(3) Is practically free from defects; and

(4) Scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade C" is the quality of tomato puree that:

(1) Has at least a fairly good flavor and odor;

(2) Has at least a fairly good color;

(3) Is at least fairly free from defects; and

(4) Scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "Substandard" is the grade of tomato puree that fails to meet the requirements of "U.S. Grade C."

§ 2852.5085 Recommended fill of container.

It is recommended that containers of tomato puree be filled as full as practicable without impairment of quality.

§ 2852.5086 Determining the grade of a sample unit.

(a) *General.* The grade of a sample unit of tomato puree is determined by considering the factor of flavor and odor which is not scored, the rating for the factors of color and defects which are scored, the total score, and the limiting rules which apply.

(b) *Factors not rated by score points.*—(1) *Flavor and odor.* (i) The flavor and odor of the product is determined on undiluted samples and also after dilution with water to between 8 percent and 9 percent, inclusive, of natural tomato soluble solids.

(ii) "Good flavor and odor" means distinct tomato puree flavor characteristic of ripe, good quality tomatoes and inclusive of salt which may be added. Such flavor and odor may be no more than slightly affected by any one or combination of the following: Stems, sepals, leaves, crushed seeds, cores; by immature, soured, or overripe tomatoes; from the effects of unsatisfactory preparation, processing, or storage; or from any other factor not specifically mentioned.

(iii) "Fairly good flavor and odor" means a characteristic tomato puree flavor, inclusive of salt which may be added. Such flavor and odor may be affected, but not to a serious degree, by any one or combination of the following: Stems, sepals, leaves, crushed seeds, cores; by immature, soured, or overripe tomatoes; or from the effects of unsatisfactory preparation, process-

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

ing, or storage; or from any other factor not specifically mentioned.

(iv) "Off flavor and odor" means tomato puree flavor that fails to meet the requirements of "fairly good flavor and odor" or which possesses a flavor and/or odor which is seriously objectionable.

(c) *Factors rated by score points.* The relative importance of each scoring factor is expressed numerically on the scale of 100. The maximum number of points that may be given each factor is:

Factors	*Points*
Color	50
Defects	50
Total	100

§ 2852.5087 Determining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be determined numerically. The numerical range within each factor is inclusive. (For example, "45 to 50 points" means 45, 46, 47, 48, 49, or 50 points.)

§ 2852.5088 Color.

(a) *General.* The amount of red in tomato puree is determined by comparing the color of the product, diluted, if necessary, with water to between 8.0 percent and 8.6 percent, inclusive, of natural tomato soluble solids (N.T.S.S.) with that produced by spinning a combination of the following Munsell color discs:

Disc 1—Red (5R 2.6/13) (glossy finish).
Disc 2—Yellow (2.5YR 5/12) (glossy finish).
Disc 3—Black (N1) (glossy finish).
Disc 4—Grey (N4) (mat finish).

Such comparison is made under a diffused light source of approximately 250 foot-candle (candela) intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7,500 degree Kelvin ±200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees and at a distance of 12 or more inches from the product.

(b) *Availability of color reference.* The colors referred to in this section are available from the approved supplier under a license from the U.S. Department of Agriculture:

Munsell Color Co.
2441 North Calvert Street
Baltimore, Maryland 21218

(c) *Use of electronic color meters.* (1) Values that may be used for conversion to a numerical score point color evaluation of the product may be determined by any electronic color meter system approved by the United States Department of Agriculture. Such values may be determined by electronic color meters only on tomato puree that has a concentration of, or may be diluted with water to, 8.5 percent (±0.1 percent) natural tomato soluble solids (N.T.S.S.).

(2) The values derived with the approved electronic color meter system shall be resolvable into a calculated numerical score point by use of any appropriate conversion formula that has been approved by the USDA.

(d) *Grade A classification.* (1) Tomato puree that has a good color may be given a score of 45 to 50 points. "Good color" means a bright, typical, red tomato puree color. Such color, when the product of the proper concentration and observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 percent of the area of Disc 1;
21 percent of the area of Disc 2; and
14 percent of the area of either Disc 3 or Disc 4; or
7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the appearance of the sample.

(2) Any calculated numerical score of 45 points, for a product of the proper concentration, shall be equivalent to a visually evaluated color score of 45 points produced under the conditions specified in paragraph (d)(1) of this section. Proportionately higher calculated numerical scores or visually assigned score points may be assigned to products of the proper concentration which show more redness.

(e) *Grade C classification.* (1) Tomato puree that has at least a fairly good color may be given a score of 40 to 44 points. Tomato puree that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means a typical red tomato puree color which may be slightly dull or have a slight yellow, yellow-orange, or brownish cast. Such color, when the product is of the proper concentration and is observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 percent of the area of Disc 1;
28 percent of the area of Disc 2; and
19 percent of the area of either Disc 3 or Disc 4; or
9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the appearance of the sample.

(2) Any calculated numerical score of 40 points, for a product of the proper concentration, shall be equivalent to a visually evaluated color score of 40 points produced under the conditions specified in paragraph (e)(1) of this section. Proportionately higher calculated numerical scores or visually assigned score points may be assigned to products of the proper concentration which show more redness.

(f) *Substandard classification.* Tomato puree that fails to meet the requirements of paragraph (e) of this section may be given a score of 0 to 39 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.5089 Defects.

(a) *General.* This factor is concerned with the degree of freedom from defects such as dark specks or scale-like particles, seeds or objectionable particles of seeds, objectionable tomato peel, harmless extraneous material, or any other similar substances.

(b) *Grade A Classification.* Tomato puree that is practically free from defects may be given a score of 45 to 50 points. "Practically free from defects" means that any defects present do not more than slightly affect the appearance or usability of the product.

(c) *Grade C Classification.* Tomato puree that is at least fairly free from defects may be given a score of 40 to 44 points. Tomato puree that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score of the product (this is a limiting rule). "Fairly free from defects" means that any defects present may be noticeable but are not so large, so numerous, nor of such contrasting color or nature as to seriously affect the appearance or usability of the product.

(d) *Substandard Classification.* Tomato puree that fails to meet the requirements of paragraph (c) of this section may by given a score of 0 to 39 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.5090 Determining the grade of a lot.

The grade of a lot of tomato puree covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 2852.1 to 2852.83).

§ 2852.5091 Score sheet.

Size and kind of container	
Label	
Container mark or identification	
Net weight	
Vacuum (inches)	
Texture (fine or coarse)	
Natural tomato soluble solids (percent)	

Factors			Score points
Color		(A)	45-50
	50	(C)	[1]40-44
		(SStd.)	[1]0-39
Defects		(A)	45-50
	50	(C)	[1]40-44
		(SStd.)	[1]0-39
Total score	100		

Flavor and odor	Good Fairly good Off
Grade	

[1] Indicates limiting rule.

NOTE: The U.S. Standards for Grades as hereby amended shall become effective May 1, 1978, and thereupon will supersede U.S. Standards for Grades of Canned Tomato Puree which have been in effect since February 25, 1970.

NOTE: The Food Safety and Quality Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C. on April 10, 1978.

JOSEPH A. POWERS,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 78-9893 Filed 4-13-78; 8:45 am]

[3410-34]

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

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Change in Disease Status of Italy because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document designates Italy as a country in which African swine fever, a contagious and infectious disease of swine, exists. Notice has been received that an outbreak of African swine fever has occurred in the Province of Sardinia, Italy. The intended effect of this amendment is to restrict the entry of pork and pork products from Italy in order to protect the livestock of the United States.

EFFECTIVE DATE: April 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. James D. Roswurm, USDA, APHIS, VS, Room 819, Federal Building, Hyattsville, Md. 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: African swine fever is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus of African swine fever is highly virulent and may be present in pork and pork products originating in countries where the disease exists. The only known practical method of destroying the contagion of the disease in pork and pork products is by heat treatment.

This document amends the regulations (9 CFR 94.8) to designate Italy as a country in which African swine fever exists, and restricts the entry of pork and pork products from Italy to those pork and pork products which have been commercially sterilized by heat in hermetically sealed containers or which are allowed controlled entry into the United States for further processing by heat.

Accordingly, Part 94, Title 9, Code of Federal Regulations is hereby amended in the following respect:

§ 94.8 Pork and pork products from countries where African swine fever exists. [Amended]

In § 94.8, in the introductory paragraph, the name of Italy is added after the reference to "France."

(Sec. 2, 32 Stat. 792, as amended (21 U.S.C. 111); 37 FR 28464, 28477; 38 FR 19141)

This amendment is of an emergency nature and must be made effective immediately to protect the livestock of the United States against the introduction of African swine fever from Italy, except with respect to intransit shipments of pork and pork products that are on board a carrier moving to the United States at the time of issuance hereof. Such intransit shipments shall upon arrival in the United States be allowed entry only under such specific requirements or be disposed of in such manner as the Administrator may determine in each specific case to be necessary and adequate to safeguard against the introduction or dissemination of African swine fever into the United States. It does not appear that public participation in this rulemaking 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 amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 11th day of April 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

E. A. SCHILF,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-9998 Filed 4-13-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management

AGENCY: Nuclear Regulatory Commission.

ACTION: Effective clarifying amendment to Table S-3 and Response to Petition for Rulemaking filed on behalf of the New England Coalition on Nuclear Pollution (Docket No. PRM-51-1).

SUMMARY: The Commission has previously published Table S-3 of 10 CFR Part 51 which identified environmental effects for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. This action amends the prior regulations to remove the value contained in Table S-3 for releases of radon and to clarify that Table S-3 does not include health effects from the effluents described. The rule as amended states that the fuel cycle rule does not preclude consideration of these impacts in individual cases. This action also responds to the NECNP rulemaking petition.

EFFECTIVE DATE: April 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Jane A. Axelrad, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone: 301-492-7437.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Nucle-

ar Regulatory Commission (hereinafter "NRC" or "Commission") has decided to amend Table S-3 of 10 CFR Part 51 "Summary of Environmental Considerations for Uranium Fuel Cycle" in the Commission's regulations "Licensing and Regulatory Policy and Procedures for Environmental Protection," 10 CFR Part 51. Specifically, the Commission has decided to clarify that certain environmental effects from the uranium fuel cycle are not included in the Table and may be litigated in individual cases.

In conjunction with this notice of rulemaking, the Commission hereby gives notice that the petition for rulemaking submitted by letter dated November 19, 1975 by Roisman, Kessler, and Cashdan, 1025 15th Street NW., Washington, D.C., on behalf of the New England Coalition on Nuclear Pollution is being denied in part. However, the issues raised in the petition relating to Radon-222 will be addressed in a future rulemaking proceeding to amend the value for Radon in Table S-3. Accordingly, action on this part of the petition is being deferred.

Description of the Petition

The New England Coalition on Nuclear Pollution petitioned the Commission to amend Table S-3 of 10 CFR Part 51, "Summary of Environmental Considerations for Uranium Fuel Cycle" in the Commission's regulations "Licensing and Regulatory Policy and Procedures for Environmental Protection," 10 CFR Part 51. A notice of the filing of the petition, Docket No. PRM-51-1, was published in the Federal Register on January 16, 1976 (41 FR 2448).

The petition for rulemaking was accompanied by two technical documents authored by Professor Robert O. Pohl, Professor of Physics, Cornell University, entitled "Nuclear Energy: Health Impact of Carbon-14" and "Health Effects of Thorium-230." These technical papers provided the technical bases for the claims presented in the petition. On December 23, 1976, the NRC received a final draft of Professor Pohl's paper "Nuclear Energy: Health Impact of Carbon-14" that replaced the draft previously sent to the NRC on November 19, 1975 as part of the original petition.

The notice of petition filing invited interested persons to submit written comments or suggestions on the petition by March 16, 1976. Because of public interest about the concerns expressed by the petition, the public comment period was extended to April 26, 1976 (41 FR 12365). The following responded to the requests for written comments: Atomic Industrial Forum, Inc.; Commonwealth Edison Co.; U.S. Environmental Protection Agency (EPA); General Electric Co.; Nuclear Fuel Services, Inc.; Ranchers Exploration and Development Corp.; Tennessee Valley Authority; Union Carbide Corp.; United Nuclear Corp.; and Westinghouse Electric Corp. All commentors, except EPA, recommended that NRC should deny the petition because, in their opinion, the petitioners have provided insufficient bases and rationale to support their claims for reassessing Table S-3 and existing licenses and for the postponement of pending applications. EPA only supplied correspondence between EPA and Dr. Pohl because of references made in the petition to EPA's dose estimate methods presented in the EPA Uranium Fuel Cycle report, EPA-520/9-73-003-B, October 1973.

In the petition, the petitioners state that: (1) The current Table S-3 seriously underestimates the impact on human health and safety by disregarding the long-term effects of certain long-lived radionuclides, particularly Thorium-230 which decays into radon gas, and that the health effects of uranium mining and milling, presently listed in Table S-3 as a total of 0.06 man-rems within five miles of the plant per annual fuel requirement, fails to disclose the long-term and long-range health effects of radon-222 gas released from tailings piles; (2) The health effects of Krypton—85 and Tritium releases from fuel reprocessing plants are underestimated in Table S-3; (3) Releases of Carbon-14 from the fuel cycle should be included in Table S-3; (4) That Table S-3, by the exclusive use of the term "man-rems", does not provide a meaningful representation of these health effects, at least in the case of those radionuclides involved in this petition, and that human deaths from man-rem exposures provide a more easily comprehended consequence of the fuel cycle activities; and (5) The magnitude of the potential death toll from mill tailings alone is so great as to alter the previous judgments on these matters and to require as a minimum a reassessment of previous conclusions to authorize construction or operation of nuclear reactors and a postponement of resolution of all pending applications for construction or operation authority until final resolution of this issue by the Commission.

The petitioners requested certain numerical changes and additions as well as a narrative text to be incorporated into Table S-3 of 10 CFR Part 51 under the subheading entitled "Effluents—Radiological (curies), Gases (including entrainment)."

Disposition of Issues Raised in the Petition

With regard to the first issue raised by the petition, the current Table S-3 value for Radon-222 is incorrect and does not include:

Estimates of radon released from mining operations.

Estimates of releases of radon from interim tailings piles after the mill has shut down and during the ensuing period while the tailings pond is evaporating and before stabilization programs are completed.

Estimates of releases of radon from stabilized mill tailings piles.

At the time the Staff developed the Table S-3 value for radon, the Staff did not have sufficient data to quantify the releases from radon involved in the mining of uranium. The Staff was unable to find any field data for radon emissions but field measurements taken by the Bureau of Mines for radon concentrations in open pit mines revealed no significant alpha concentrations.

Even though there was no meaningful field data for estimating a specific radon release quantity, the Staff was able to conclude that radon concentrations away from the immediate vicinity of the mine would not be detectable against natural background. This Staff conclusion was supported by conclusions reached in the BEIR report[1] and the U.S. Environmental Protection Agency report, "Estimates of Ionizing Radiation Doses in the United States 1960-2000,"[2] both of which are cited in WASH-1248.

With regard to milling, estimates of releases from interim tailings piles were not included because it was assumed that these piles remained wet until stabilized and therefore did not permit significant releases of radon. The Staff considered available information, particularly the report of the U.S Environmental Protection Agency entitled, "Estimates of Ionizing Radiation Doses in the United States 1960-2000" to determine releases from stabilized piles. This document reported the results of studies made at active and inactive mill sites with covered and uncovered tailings which showed no significant radiation exposure to the public. Based on these studies, the Staff concluded in WASH-1248, B-23, that population doses attributable to the uranium milling industry would not be distinguishable from natural background radiation.

However, since the original Table S-3 was promulgated, new estimates of releases have been devised that require upward revision of the value for radon in Table S-3. Therefore, the

[1] "The Effects on Populations of Exposure to Low Levels of Ionizing Radiation," Report of the Advisory Committee on the Biological Effects of Ionizing Radiation (BEIR), Nat'l. Ac. Sci., Nat'l Res. Council, Washington, D.C., (Nov. 1972), P. 15. (Cited in WASH-1248 at p. A-4).

[2] ORP/CSD 72-1, Estimates of Ionizing Radiation Doses in the United States 1960-2000, U.S. Env. Prot. Agency (Aug. 1972), p. 27. (Cited in WASH-1248 at p. A-4).

Commission is amending Table S-3 to eliminate the value for radon releases. This issue may henceforth be litigated in individual licensing proceedings since it is not now covered by the rule. A clarifying amendment to Table S-3 to this effect is set forth below.

The Commission intends to evaluate data that is being collected in a series of ongoing programs described below and will determine when the Generic Environmental Impact Statement (GEIS) on uranium milling is issued whether to initiate a limited rulemaking proceeding to include a revised value for Radon-222 in an updated Table S-3. In determining whether to initiate such a rulemaking, the Commission will evaluate the arguments of the NECNP petition. It will also consider statements made in a memorandum written by Walter H. Jordan, a member of the Atomic Safety and Licensing Board Panel, to James R. Yore, Chairman of the Atomic Safety and Licensing Board Panel. A copy of that memorandum, which raised issues similar to those raised in the petition, is on file in the NRC public document room. In any event, the Commission plans a general long-term effort to update the rule and the radon issue will be addressed then.

The second and third issues raised by the petition were specifically addressed when the Commission published a revised interim Table S-3 in March of 1977 (42 FR 13803, March 14, 1977). Interim Table S-3 contains upward revisions of releases for both Krypton-85 and Tritium. The differences between the petitioner's estimates of releases and the NRC estimates are due to differences in the models. The basis for the NRC models is described in detail in NUREG-0116 and 0216.

Carbon-14 has been added to the interim Table S-3. The differences between petitioner's estimates of releases and the NRC estimates are due to differences in models. The basis for the Carbon-14 model is described in NUREG-0116 and NUREG-0216.

The petitioner's fourth issue is that Table S-3 does not provide a meaningful representation of health effects. Health effects were addressed in NUREG-0216 in response to comments that the Commission should have considered them. However, the Commission decided to pattern the interim rule after the original S-3 Table which did not include such effects in the actual table. The Commission implicitly addressed fuel cycle health effects in the Statement of Considerations accompanying Table S-3 when the Commission noted that "the environmental impacts of the uranium fuel cycle have been shown to be relatively insignificant."[3] Accordingly, health effects were not discussed in individual licensing proceedings until after the decision in *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), 5 NRC 92, 103 (1977) where the Appeal Board required that they be considered in connection with comparison ofthe uranium and fossil fuel cycles. The Commission believes that, for the present, the purposes of NEPA are advanced by discussing health effects in individual cases. To clarify this point, the Commission has removed all dose estimates attributable to gaseous effluents from the Footnotes in the Table and has amended Footnote 1 to indicate that health effects are not covered by the Table and may be litigated in individual cases.

To summarize the Commission's position on the NECNP petition:

1. The portion of the petition that recommends that Table S-3 be amended to include upward revisions of the values for Krypton-85, Tritium and Carbon-14 was in effect granted, although the specific values suggested by the petitioner were not adopted. These values were revised upward when the Commission promulgated the Interim Table S-3 on March 14, 1977 and are being reexamined during the final rulemaking proceeding on waste management and reprocessing.

2. The portion of the petition that recommends that Table S-3 be amended to include health effects is denied. The Commission has determined for the present that these effects should be dealt with in individual licensing proceedings rather than by rule. The effluent release data set forth in the revised Table shall provide the basis for derivation of population doses and resultant health effects in individual licensing proceedings. The Commission will, at a later date, reexamine whether doses and health effects should be included in Table S-3. It will also address the question of what period of time should be used to calculate doses and health effects. These issues have been raised in the final rulemaking proceeding on waste management and reprocessing mentioned above and will be addressed in the overall revision of Table S-3 described below.

3. The Commission agrees with that portion of the petition that recommends that the values for Radon-222 in Table S-3 be amended. The Commission, however, is deferring instituting a rulemaking on this issue. The Commission recognizes that radon releases from the fuel cycle must be considered in licensing decisions. Pending generic consideration of this issue, radon released from the fuel cycle can be considered in individual proceedings.

Petitioner has asserted that the NRC should halt licensing until the issues raised by the petition are resolved. The Commission believes that the clarifying amendment now issued removes any need for a blanket postponement of licensing. Some issues raised by the petition have already been resolved by the Commission. Other issues, particularly those relating to Radon-222 and health effects, may be considered in individual cases. The Commission believes that the information that is presently available should enable individual licensing boards to evaluate the significance of fuel cycle radon releases in striking the environmental cost-benefit balance for a nuclear power reactor.[4] The Commission has chosen to leave these issues open for litigation in individual proceedings, rather than freeze by an immediate rulemaking the form such an evaluation should take, in order that experience with varying approaches may be gathered as a possible basis for generic rule later on. Also, much new information relevant to the environmental impacts of radon will soon become available. When the Commission considers environmental impacts in individual licensing actions, it need not also consider them generically. *NRDC* v. *NRC*, 547 F. 2d 633, 641 (D.C. Cir. 1976) *cert.* granted. 429 U.S. 1090 (1977) (No. 76-419). Accordingly, the Commission denies petitioner's request to halt licensing of reactors.

The Commission does not believe it is necessary to now reopen all proceedings where licenses have already been issued. With regard to the most serious issue, radon releases, as discussed below, a number of programs are in progress to gather additional information on the environmental impacts of mining and milling. Upon completion of these programs, the Commission may reassess its conclusions as to the acceptability of the environmental impacts from mining and milling. Existing licenses may be reevaluated at that time if the data warrants it. It does not seem likely that any radon hazard associated with continued construction or continued operation of reactors in the interim will be significant. The short term releases of radon from mill tailings will be small, and steps can be taken in the future to reduce long-term releases.[5] If, however, anyone be-

[3] 39 FR 14188.

[4] It remains up to the licensing board, however, to determine in the first instance whether the evidence actually presented to it by the parties and the NRC staff is sufficient to support an environmental analysis that meets NEPA standards.

[5] The NRC Staff is currently requiring applicants for uranium mill licenses to commit to plans for tailings disposal in accordance with interim criteria developed by the Staff for tailings waste management and disposal. Key features of these interim criteria include requirements to (a) locate the tailings isolation area such that disruption and dispersion by natural forces are minimized, (b)

Footnotes continued on next page

lieves that the circumstances of a particular case dictate that a license should be reexamined to take into account new information on radon or on the other subjects on which the amendments set forth below would now permit case-by-case adjudication, then an appropriate request for enforcement action can be filed under 10 CFR § 2.206.

Where limited work authorizations, construction permits, or operating licenses have been issued but proceedings are still pending before Licensing or Appeal Boards, evidence on radon releases shall be received as follows: In proceedings pending before Licensing Boards, the Commission hereby directs the Licensing Boards to reopen the record on NEPA issues for the limited purpose of receiving new evidence on radon releases and on health effects resulting from radon releases. Where cases are pending before Appeal Boards, the Appeal Boards are also directed to reopen the records to receive new evidence on radon releases and on health effects resulting from radon releases.

LWA's, construction permits, or operating licenses already issued shall remain effective unless a stay of the decision issuing the license or LWA is granted upon request of a party pursuant to the criteria set forth in 10 CFR § 2.788.

Footnotes continued from last page

reduce the release of radon from the tailings disposal area to about twice the release rate in the surrounding environs, and (c) eliminate the need for routine long-term monitoring and maintenance programs.

Licensees have proposed various methods to meet the performance objectives. One is a surface burial method whereby radon control and isolation is achieved through placement of a clay cap over the tailings covered by an overburden of several feet of soil with appropriate consideration given to minimizing effects of wind and soil erosion.

A more recent method that has been proposed consists of below grade burial of the tailings to provide increased assurance that tailings will remain isolated for long periods of time. This kind of disposal virtually eliminates potential for disturbance by natural erosion forces and makes possible increased attenuation of radon releases. Return of the tailings to open minepits has been selected as the tailings disposal method for one of our applicants. Below grade disposal is being evaluated as the prime option for other mills currently undergoing license review.

The generic environmental impact statement on uranium milling presently being prepared by the Commission is considering a wide range of alternatives similar to those previously evaluated by Oak Ridge National Laboratory (ORNL-4903). For example, it will evaluate alternatives which entail removing radioactivity from the tailings.

On the basis of the Staff's reviews of reclamation plans employing surface burial or below grade burial methods, the Staff has advised the Commission that steps such as those described above, can be taken in the future to reduce long-term releases from tailings disposal sites.

Ongoing Programs

The Commission has a number of programs in progress, some of which will supply data necessary for a generic resolution of issues not now covered in Table S-3:

Waste management and reprocessing. The Commission recently published a revised interim Table S-3 (42 FR 13803, March 14, 1977) along with supporting documents, NUREG-0116 and NUREG-0216. The Commission has already begun to conduct rulemaking proceedings to replace the interim Table S-3 with an updated rule in the areas of fuel reprocessing and waste management.[6]

Milling. Preparation of a draft Generic Environmental Statement (GEIS) on mill tailings is underway and is expected to be made available for public comment in September 1978. In conjunction with preparation of this statement, an extensive multiyear field measurement program was initiated in early 1977 to develop data to estimate effluent release rates from mills and stacks, from ore piles and from tailings piles. These studies will also measure offsite concentrations to evaluate transport information and the significance of food ingestion pathways. Specific laboratory studies are also being conducted to estimate radon emissions from tailings piles both during operation and following stabilization. More recently, a general study was initiated as part of the GEIS to evaluate the long term stability of mill tailings disposal alternatives. Data from these studies is expected to become available in the summer of 1978. As a result of these studies the Commission will evaluate whether levels of radon releases should be further reduced.

The Commission will explore several alternatives to determine what level of reduction of releases is environmentally acceptable including reduction of radon releases to natural background levels and reduction of releases to amounts equal to releases had no mining or milling taken place.

Mining. A 2-year research program was initiated in the fall of 1977 to obtain measurements of radon-222 at underground and open pit mines. The initial measurements from underground mines are expected early in 1978. Information from this program and from research on uranium mills might provide a basis for the limited rulemaking proceeding on radon described above. As was stated previously, the Commission will make the determination whether to initiate such a limited proceeding after the draft GEIS on milling is issued.

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[6] Nothing in this Notice should be construed as affecting in any way the scope of the final rulemaking proceeding on waste management and reprocessing.

Overall update of Table S-3. In addition to the aforementioned programs, the Commission has announced its intention to initiate a long-term effort to completely update the rule in all areas of the fuel cycle. (42 FR 26987, May 26, 1977). Specific efforts to produce a completely updated and revised Table S-3 and supporting document for the entire fuel cycle have begun. A technical assistance contractor to work with the NRC Staff is now being selected. The contractor will first analyze the format and content of Table S-3 to determine the method for most effectively characterizing environmental impacts. The contractor will collect, evaluate, and synthesize the results from a wide range of applicable NRC research and study programs. The major research programs include field measurements of radon releases from mining and the GEIS on milling, as discussed above. In addition, emphasis will be given to NRC studies of occupational exposure, decommissioning, and non-radiological effluents. The importance of new concepts and technologies, such as centrifuge enrichment, mining by in-situ leaching, spent fuel storage, and disposal will be evaluated.

Immediate Clarifying Changes

The amendments to Table S-3 set forth below clarify that the Table does not cover:

Estimates of radon released;

Health effects.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and section 553 of Title 5 of the United States Code, the following amendments to 10 CFR Part 51 are published as a document subject to codification. Since the amendments are of a clarifying nature, serve to relieve a restriction, and are necessary to enable correct information regarding fuel cycle environmental impacts to be utilized in ongoing and future licensing proceedings, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, and that the amendments may be made effective upon publication.

In Table S-3—Summary of environmental considerations for uranium fuel cycle, of 10 CFR Part 51, (a) the entry for Radon-222 under "Effluents—radiological (curries)" and the accompanying textual material which now reads:

"Rn-222	74.5	Principally from milling operations and excludes contributions from mining."

is revised to read as follows;

"Rn-222	—	Presently under reconsideration by the Commission."

and (b) footnotes 5 and 6 accompanying the Table are deleted and footnote 1 is amended to read as follows:

"[1] In some cases where no entry appears it is clear from the background documents that the matter was addressed and that, in effect, the Table should be read as if a specific zero entry had been made. However, there are other areas that are not addressed at all in the Table. Table S-3 does not include health effects from the effluents described in the Table, or estimates of releases of Radon-222 from the uranium fuel cycle. These issues which are not addressed at all by the Table may be the subject of litigation in individual licensing proceedings. Data supporting this Table are given in the 'Environmental Survey of the Uranium Fuel Cycle,' WASH-1248, April 1974; the 'Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle,' NUREG-0116 (Supp. 1 to WASH-1248); and the 'Discussion of Comments Regarding the Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle,' NUREG-0216 (Supp. 2 to WASH-1248). The contributions from reprocessing, waste management and transportation of wastes are maximized for either of the 2 fuel cycles (uranium only and no-recycle). The contribution from transporatation excludes transportation of cold fuel to reactor and of irradiated fuel and radioactive wastes from a reactor which are considered in Table S-4 of sec. 51.20(g). The contributions from the other steps of the fuel cycle are given in columns A-E of Table S-3A of WASH-1248."

3. The second sentence of 10 CFR § 51.20(e) is amended to read as follows:

"No further discussion of the environmental effects addressed by the Table shall be required."

Effective date: The foregoing amendments take effect on April 14, 1978.

(Sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended, Pub. L. 94-83, 89 Stat. 424 (42 U.S.C. 4332); Sec. 161, as amended, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 202, Pub. L. 93-438, 88 Stat. 1244 (42 U.S.C. 5842); Pub. L. 89-554, 80 Stat. 383 (5 U.S.C. 553).)

Copies of the petition for rulemaking, the associated public comments, and the Commission's letter to the petitioner are available for inspection or publication in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555.

Dated at Washington, D.C. this 11th day of April, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-9952 Filed 4-13-78; 8:45 am]

[3128-01]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretations issued by the Office of the General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period March 1, 1978 through March 31, 1978. Also attached is a copy of a delegation of authority by the General Counsel effective April 6, 1978, authorizing the Assistant General Counsel for Interpretations and Rulings to issue Interpretations.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of the General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, the Interpretations published below are subject to appeal pursuant to § 205.86 as it existed prior to the amendment of DOE's procedural regulations (43 FR 14436, April 6, 1978), which eliminated administrative appeals of Interpretations issued after April 1, 1978. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the Notice first cited above.

[1] EDITORIAL NOTE.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

Issued in Washington, D.C., April 11, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration,
Department of Energy.

APPENDIX I

No., to, date, category

1978-6—Mobley Oil Co., March 16, price.
1978-7—Amoco Oil Co., March 18, price.
1978-8—Mobil Oil Corp., March 18, price.
1978-9—H. H. Weinert Estate, March 18, price.
1978-10—Tesoro Petroleum Corp., March 24, price/allocation.

INTERPRETATION 1978-6

To: Mobley Oil Co.
Date: March 16, 1978.
Rules Interpreted: § 212.75, Ruling 1975-15, Ruling 1977-2.
Code: GCW-PI-Unitization, BPCL.

FACTS

Mobley Oil Co. (Mobley) is the producer-operator of the Lewisville Smackover Lime Unit, an enhanced recovery project located in Lafayette County, Arkansas. According to its submission, the various leases which comprise this unit were unitized on May 1, 1975 by order of the Arkansas Oil and Gas Commission and at that time their production patterns were significantly altered.

After the publication of Ruling 1975-15 on September 4, 1975, by the Federal Energy Administration (FEA), a predecessor agency of the Department of Energy, Mobley determined and certified a unit base production control level (BPCL) for the Lewisville Smackover Lime Unit. Mobley continued to utilize the unit BPCL computer pursuant to Ruling 1975-15 after the FEA promulgated a new § 212.75 (effective February 1, 1976). However, following the amendment of § 212.75 by the FEA (effective September 1, 1976), Mobley recalculated its unit BPCL in accordance with that regulation. Due to Mobley's uncertainty as to the application of § 212.75 to its unit's operations, Mobley calculated two unit BPCL's after September 1, 1976—one in accordance with Ruling 1975-15 and the other pursuant to § 212.75. Since that time, Mobley has placed in an escrow account the difference between the production proceeds which would have been received under Ruling 1975-15 and those actually received by its application of § 212.75.

ISSUE

May Mobley utilize the provisions of § 212.75 to compute a unit base production control level for the Lewisville Smackover Lime Unit, which was unitized and significantly altered its producing patterns in May 1975?

INTERPRETATION

It has been concluded that units which initiated enhanced recovery operations or significantly altered producing patterns prior to February 1, 1976, may not utilize § 212.75 for computation of their unit base production control levels (BPCL's).

On August 31, 1975, the FEA issued Ruling 1975-15, 40 FR 40832 (September 4, 1975), which represents the agency's first ruling discussing the concept of a unitized property. The ruling provides with respect to post-1972 unitization:

"In the case of a property that was unitized after calendar year 1972, the need for

comparison of like quantities requires the producer in computing the BPCL to measure and total the individual 1972 monthly production levels for each of the leases that now comprise the unit. Accordingly, for example, where a unit consists of several leases that were unitized in 1973, the property consists of the unit, and the BPCL is the total 1972 monthly production from all of the several leases that now comprise the unit. Under no circumstances, therefore, would a post-1972 unitization create a 'new' property, i.e., one that has no BPCL."

Thus, in order to determine the BPCL for a property which was unitized after 1972 (and prior to February 1, 1976), Ruling 1975-15 requires the aggregation on a month-to-month basis of the 1972 production and sales from the separate leases comprising the unit. Consequently, the amounts of new and released crude oil available for sale from the unit would be derived by comparing a particular month's production and sale to the unit's BPCL.

On December 22, 1975, the Energy Policy and Conservation Act (EPCA) was enacted into law (Pub. L. 94-163). Section 401 of the EPCA amended the Emergency Petroleum Allocation Act of 1973 (EPAA) by adding a new § 8, which set forth a crude oil pricing scheme.[2] One aspect of this pricing mandate required the President to adopt implementing regulations to be made effective "(n)ot later than the first day of the second full calendar month following the date of enactment of (section 8)."

In connection with the first stage rulemaking to implement the pricing policy of the EPCA, the FEA on February 1, 1976, rescinded portions of Ruling 1975-15 *ab initio* to permit producers of unitized properties to determine quantities of upper tier crude oil on a lease-by-lease basis until enhanced recovery operations had begun or until such time as there was "a significant alteration in producing patterns." 41 FR 4931 (February 3, 1976). In addition, the FEA on that date adopted a new unitized property rule (10 CFR 212.75) which applied to enhanced recovery units. It provided in part:

"(a) *Rule.* A producer shall as of the date of implementation of enhanced recovery operations on a unit or as of the date production patterns with respect to individual leases within a unit are substantially altered (whichever date occurs first), establish a unit base production control level for the unit."

For purposes of this new rule, a unit BPCL was defined as:

". . . the total number of barrels of old crude oil (1) produced and sold from all properties that constitute the unit, plus (2) the total number of barrels of crude oil produced from all stripper well leases that constitute the unit during the 12 month period immediately preceding the establishment of a unit base production control level for the unit, such total divided by 365, multiplied by the number of days in that particular month."

The preamble to the final rulemaking promulgating § 212.75 suggests that the regulation was not intended to apply to enhanced recovery units unitized prior to the regulation's effective date of February 1, 1976. 41 FR 4931 (February 3, 1976). In discussing the impact of the BPCL regulation on the prospective unitization of properties, the February 1 notice stated:

"FEA believes that to whatever extent the prior regulations might have acted as a disincentive to unitization, this disincentive should be largely eliminated under the revised BPCL associated with the EPCA-implementing regulations adopted today. Establishing a BPCL based upon production and sale of old crude oil in 1975 will, for example, have the effect of eliminating all current cumulative deficiencies as of February 1, 1976. Therefore, *producers would begin in February 1976,* under the EPCA-implementing regulations, with revised BPCL's and no production deficiencies. Once new crude oil is sold from a property *after today,* however, the cumulative deficiency provisions will begin to run anew if production and sale drop below the revised BPCL in any subsequent month to provide the additional incentive to maintain levels of increased production. Accordingly, there is not likely in the *near future* to be any significant disincentive to the *prospective unitization* of properties arising out of the potential loss of upper tier crude oil derived from production and sale in excess of a property's BPCL, even where the individual lease BPCL's are combined to form a single BPCL for the unit. Moreover, the retroactive rescission of the portion of Ruling 1975-15 referred to above eliminates the most significant disincentives that producers had faced under prior regulations.

"For units established later in 1976, or thereafter, when individual leases may again have accumulated deficiencies or fallen below their revised BPCL's, a special rule for unitized properties was proposed for comment and is adopted today. This rule will permit the determination of quantities of new crude oil from enhanced recovery units to be based upon an even more current base level. *This special BPCL rule will apply only to unitized properties, which will qualify for the special treatment at the time enhanced recovery operations are commenced, or producing patterns are significantly altered in anticipation of enhanced recovery operations."* [Emphasis added.]

Thus, the FEA's intent in adopting § 212.75 was to eliminate on a prospective basis, effective February 1, 1976, certain disincentives to unitization which had existed under prior regulations. There is no evidence in the February 1 rulemaking that § 212.75 was intended to apply to pre-February 1976 enhanced recovery units.

Furthermore, the February 1 notice clearly rescinds *ab initio* only those specific portions of Ruling 1975-15 which address the point at which a producer should begin treating an enhanced recovery unit as a single property for purposes of determining quantities of new and released (under prior regulations) crude oil. There is no other language in the February 1 notice directing the rescission or modification of Ruling 1975-15 with respect to any time period prior to February 1, 1976, despite the fact that such matters were carefully considered by the FEA:

"However, to ensure that any disincentives that might have existed under the prior regulations would not be carried over into the regulations adopted today, FEA considered in this rulemaking (A) the extent, if any, to which FEA should reconsider in whole or in part Ruling 1975-15, including the effective date of any such revisions, and (B) whether any regulatory amendments are needed to remove disincentives that existed under prior regulations, as interpreted by Ruling 1975-15." 41 FR 4931 (February 3, 1976).

The February 1 notice, moreover, concluded the discussion addressing the reconsideration of Ruling 1975-15 (which was restricted to the aforementioned rescission) with the following language:

"Except as discussed above, *Ruling 1975-15 is affirmed in all other respects."* (Emphasis added.)

Therefore, at the time of the adoption of § 212.75, the February 1 notice reveals an intent by the FEA to limit the application of that regulation to units which were unitized after February 1, 1976; with respect to those units which were unitized and had significantly altered their producing patterns prior to that date, producers were to continue utilizing the guidelines set forth in Ruling 1975-15.

Effective September 1, 1976, the FEA amended § 212.75 to provide in relevant part:

"Rule. With respect to each unitized property, a producer shall, as of the effective date of unitization, establish a unit base production control level.

" 'Unit base production control level' means, (1) the total number of barrels of old crude oil, as defined in § 212.72, produced and sold during the 12 month period immediately preceding the establishment of a unit base production control level for the unitized property from all properties that constitute the unitized property; plus (2) the total number of barrels of crude oil produced during the 12 month period immediately preceding the establishment of a unit base production control level for the unitized property from all stripper well properties that constitute the unitized property; divided by 365, and multiplied by the number of days in the particular month."

The preamble to the final rulemaking, issued on August 20, 1976, which amended § 212.75, also discussed enhanced recovery units. 41 FR 36171 (August 26, 1976). This discussion concerned the impact on enhanced recovery units of the adopted amendments of § 212.75 and concluded with the following language:

"The foregoing clarifications and modifications to the regulations concerning unit BPCL's should serve effectively to remove any FEA regulatory impediments to the formation of units, and thereby facilitate the enhanced recovery projects such units are typically intended to promote."

The August 20 notice excluded any language indicating that § 212.75 was intended to apply to enhanced recovery projects unitized prior to February 1, 1976. Thus, neither the August 20 notice which adopted certain amendments to § 212.75 nor the February 1 notice which adopted the initial regulation provide any indication other than that the intended application of § 212.75 was to be prospective.

A few months after the August 20 notice, FEA issued a ruling which, among other things, specifically addressed the application of § 212.75. Ruling 1977-2, 42 FR 4409 (January 25, 1977), issued on January 19, 1977, states in unambiguous language:

"Section 212.75, adopted on February 1, 1976, is applicable only to enhanced recovery unitized properties which established a unit BPCL on or after February 1, 1976." [Emphasis added.]

[2] Although the EPCA makes reference to providing incentives for enhanced recovery units, there is no express language in either the act or in its legislative history indicating a congressional intent that such incentives should be applied to pre-existing enhanced recovery projects.

In the case of units which significantly altered producing patterns and thus were required to determine a unit BPCL prior to February 1, 1976, Ruling 1977-2 provides explicit language directing that the BPCL computations be in accordance with Ruling 1975-15:

"Determination of new, released, and stripper well crude oil for units formed prior to that date on which unit BPCL regulations were adopted (February 1, 1976 for enhanced recovery units and September 1, 1976 for all units) are subject to the provisions of FEA Ruling 1975-15 as modified on February 1, 1976."

Based on the foregoing, a unit in which producing patterns were significantly altered subsequent to 1972 and prior to February 1, 1976 (the effective date of § 212.75), may not compute its unit BPCL in accordance with that regulation, but must comply with the requirements set forth in Ruling 1975-15. That ruling requires that such a unit must compute its unit BPCL by aggregating the 1972 monthly production levels from all of the several leases which presently comprise the unit. In the alternative, after January 31, 1976, § 212.72 permits the computation of a property's BPCL to be based upon 1975 old crude oil production levels.[3]

"Base production control level" means: (1) With respect to months ending prior to February 1, 1976:

(A) If crude oil was produced and sold from the property concerned in every month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(B) If crude oil was not produced and sold from the property concerned in every month of 1972, the total number of barrels of crude oil produced and sold from that property in 1972, divided by 12;

(2) With respect to months commencing after January 31, 1976, except as provided in § 212.76, either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(B) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(1), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

Accordingly, since the Lewisville Smackover Lime Unit was unitized in May 1975 and significant alternations in producing patterns occurred at that time, the unit is precluded from using § 212.75 for its unit BPCL calculation and must therefore rely upon the guidelines set forth in Ruling 1975-15 and Ruling 1977-2. These guidelines require that the unit BPCL for the Lewisville Smackover Lime Unit be computed using either the aggregate of monthly 1972 total crude oil production from each of the properties which comprise the unit; or, after February 1, 1976, in the alternative (pursuant to § 212.72), the combination of 1975 old crude oil production from each formerly separate property (and after May 1, 1975, the entire unit property) which is part of the unit, divided by 365, and multiplied by the number of days of the month in 1975 which corresponds to the month concerned.

[3] Section 212.72 provides in relevant part:

INTERPRETATION 1978-7

To: Amoco Oil Co.
Date: March 18, 1978.
Rules Interpreted: § 210.62.
Code: GCW - PI - Normal Business Practices.

FACTS

Amoco Oil Co. (Amoco), a wholly-owned subsidiary of Standard Oil Co. of Indiana, is a refiner as that term is defined in 10 CFR 212.31 and is subject to the refiner price regulations set forth in 10 CFR Part 212, Subpart E. Amoco sells motor gasoline to independent dealers and jobbers at the wholesale and retail level and through company owned outlets, which market the gasoline using the branded name "Amoco."

Prior to May 15, 1973, Amoco introduced a system which enabled purchasers holding Amoco credit cards to purchase various products and services, including motor gasoline at Amoco retail outlets. Amoco controls and administers the issuance of these credit cards. Amoco has entered into agreements with its dealers and jobbers which obligate Amoco to purchase from the dealers and jobbers credit card sales tickets for various merchandise and services sold by the dealers or jobbers to retail consumers possessing Amoco's credit cards. One condition to Amoco's purchase of such tickets is that they must be properly printed on an imprinting machine authorized by Amoco.

The credit card agreements between Amoco and its branded independent dealers and jobbers are independent contracts and do not contain terms or conditions for sale or delivery of covered products. Amoco has no policy which requires dealers to participate in credit card agreements as a prerequisite to sale or delivery of covered products. Nevertheless, over ninety-nine percent of Amoco's independent dealers have entered into these credit card agreements. Non-participating dealers may make their own credit arrangements with their customers.

As a normal business practice prior to, subsequent to and on May 15, 1973, Amoco has purchased imprinting machines and leased them to its dealers and jobbers at an annual rental fee of $36.50. Amoco is obligated pursuant to the rental agreement to provide repair and maintenance services resulting from normal usage of the imprinting machines. These imprinting machine leases are also independent contracts, and do not contain terms and conditions for sale or delivery of covered products, *e.g.* motor gasoline, to jobbers and dealers. Possession and use of designated imprinting machines is a prerequisite to Amoco's purchase of credit sales tickets. Most of the imprinting machines currently in use were purchased by Amoco in the mid 1960's and are antiquated and sometimes worn out. According to Amoco, when purchased these machines cost approximately XXXXX and would cost approximately XXXXXX if purchased today.

Amoco desires to replace all of these imprinting machines with two new types of equipment. These new machines not only perform the same imprinting functions as the existing machines, but also provide the dealer with a continuous log of all credit card sales. The new machines would be the only machines authorized by Amoco for credit card imprinting use, so that each dealer or jobber location would have to use this equipment as a condition to Amoco's obligation to purchase the credit tickets. Each reseller location would be required to have at least one imprinter and one or more charge recorders.

Amoco proposes to lease the new equipment to dealers at a rental of $60.00 per year for the imprinter plus $15.00 per year for each charge recorder. The new imprinters cost approximately xxxxxx and each charge recorder costs approximately XXXXX. Amoco expects that the firm's return on investment from the leasing of these new machines, including depreciation and administrative expenses, will not exceed fifteen percent per annum spread over the reasonable life of the machines. Furthermore, the anticipated return on investment for Amoco should be less than half of that which the firm realized under the previous imprinting machine leases.

Amoco's marketing research involving tests of the new machines at 450 retail outlets revealed that in many cases the use of the new devices resulted in a 20 percent saving to dealers in bookkeeping time related to credit card sales, improved accuracy in billing, and reduced losses due to fraud and lost tickets. The majority of dealers participating in these tests, according to Amoco, approved of the firm's adoption of these new machines.

ISSUE

Does 10 CFR 210.62(c) prohibit Amoco from increasing the rents charged to dealers and jobbers for the lease of higher cost new and improved credit card imprinting machines used in the retail sale of motor gasoline?

INTERPRETATION

For the reasons set forth below, Amoco's proposal as described above to increase the rents charged to its dealers for the use of the higher cost new and improved credit card imprinting machines does not constitute a violation of 10 CFR 210.62(c).

While prices, terms and conditions of contracts for ancillary services between purchasers and sellers of covered products are not subject to direct controls under the pricing and allocation regulations, the Department of Energy may lawfully restrict the imposition of such prices, terms and conditions which constitute a means to obtain a higher price than that permitted by the regulations for a covered product. *Marathon Oil Co.* v. *F.E.A.*, 547 F.2d 1140 (TECA 1976) *cert. denied*, 431 U.S. 983 (1977); See, *Shell Oil Co.* v. *F.E.A.*, 527 F.2d 430 (TECA 1975). Section 210.62(c), in pertinent part, provides that:

Any practice which constitutes a means to obtain a price higher than is permitted by the regulations . . . or to impose terms or conditions not customarily imposed upon the sale of an allocated product is a violation of these regulations. Such practices include, but are not limited to . . . tie-in agreements, . . . or failure to provide the same services and equipment previously sold.

The provisions of § 210.62(c) were interpreted in *National Airlines, Inc.*, Interpretation 1977-11 (May 28, 1977), with reference to airport fuel truck leasing agreements. The Interpretation concluded that:

The extent to which it may be necessary to exercise control over delivery terms, *prices charged for ancillary services* or delivery-related equipment rentals, in order to assure that price controls on the sale of pe-

troleum products are not circumvented, depends upon the extent to which such items are inseparably related to delivery of petroleum products *and the extent to which circumvention of regulation concerning price or allocation of petroleum products appears to be involved.* (Emphasis added.)

Thus, the higher annual rents proposed by Amoco for the new imprinting machines may violate § 210.62(c) if the firm's proposal can be construed as a circumvention of the regulations to obtain a price higher than that permitted by the regulations. Ruling 1975-4 considered whether a firm's attempt to modify its storage tank leasing practices would constitute an impermissible price increase under § 210.62(c). The Ruling concluded that charging a rent for propane storage tanks, previously offered free of charge, would constitute a means to obtain a price higher than that permitted by the regulations. However, Ruling 1975-11, when considering the permissibility of increasing the rent charged for *new* and *higher cost* propane storage tanks, distinguished Ruling 1975-4 by stating:

That ruling [1975-4], in effect, established a presumption that an increase in tank rental rates is regarded as an increase in the price of the product, and, as such, is regarded as a means to obtain a price higher than is permitted by the regulations. That presumption is, however, overcome where, as here, the storage tanks being furnished have been acquired at higher cost and the amount of new or increased rent being charged for those storage tanks is reasonably related to the increased costs of those storage tanks.

Ruling 1975-11 permitted increased rental charges for new propane storage tanks where the cost of new storage tanks increased substantially, where the increase applied only to customers receiving new tanks, and where the increased rental charge reflected the increased cost of the new tanks spread over their reasonable useful life. In addition, the increased cost of new storage tanks recouped in this manner could not be included as non-product cost increases for purposes of justifying higher prices for propane or other covered products.

The situation considered in Ruling 1975-11 is analogous to the facts presented in this request.[4] Applying these principles, Amoco's proposed credit card machine rental is directly and reasonably related to the acquisition costs of the new machines, reflecting an anticipated rate of return of less than 15 percent per annum spread over the reasonable life of the machines. Additionally, the price of the new imprinting machines is substantially greater than either the original or the replacement cost of the machines now in use. The rental increases will be absorbed only by the dealers which receive new machines; and such increases will reflect the number of machines leased. Finally, the annual rental charge for the new equipment reflects a lower anticipated return on investment for Amoco and a lower percentage of the purchase price than the rental charge on the equipment now in use. Amoco's implementation of its proposal to utilize new credit card imprinting and recording devices at an increased rental, therefore, does not appear to be a means to obtain a price higher than that permitted by the regulations and, consequently, is not a violation of 10 CFR 210.62(c).

[4] Ruling 1975-11 does not apply to refiners with regard to containers, since increased container costs incurred by refiners are permitted to be recouped under the refiner's cost allocation formulae now contained in § 212.83(c)(2)(iii)(E)(VI). However, the guidance provided by the Ruling is applicable to Amoco's situation, since the increased costs of new imprinting machines could not be and are not now, according to Amoco, being recouped under § 212.83. Of course, should Amoco attempt to recoup increased imprinting machine costs as non-product costs, the firm would be ineligible also to increase the rental for the same machines.

INTERPRETATION 1978-8

To: Mobil Oil Corp.
Date: March 18, 1978.
Rules Interpreted: § 212.83(c)(2)(iii)(E).
Code: GCW—PI—Refiner Price Formula, "N" Factor; Non-Product Cost Increases.

FACTS

Mobil Oil Corp. ("Mobil") is a refiner subject to the petroleum price regulations set forth in 10 CFR Part 212, Subpart E.

Mobil is insured for all basic insurance coverage with independent insurance carriers. On May 15, 1973, Mobil's total insurance coverage for Fire and Extended Coverages and Public Liability Coverage included a deductible of $100,000. Because of substantial increases in the cost of insurance since May 15, 1973, Mobil elected to increase its deductible to $1 million on January 1, 1977. The increase in the deductible reduces the premiums Mobil pays its insurance carriers.

Mobil wishes to calculate its increased cost of insurance, for purposes of computing non-product cost increases under the price regulations, as though it were actually paying the higher premiums based on the $100,000 deductible. In Mobil's view, the difference between the current market price of the policies with a $100,000 deductible and Mobil's current actual premium payments should be considered a "self-insurance cost" increase, in order to encourage refiners to reduce actual costs wherever feasible.

ISSUE

May such "self-assurance" be considered a non-product cost under § 212.83(c)(2)(iii)(E)?

INTERPRETATION

For the reasons noted below, self-insurance may not be considered a non-product cost under § 212.83(c)(2)(iii)(E).

Under the refiner price regulations, the definition of "maximum allowable price" includes increased product costs and increased non-product costs (§ 212.82). Section 212.83(c)(2)(iii)(E), in allowing for non-product cost increases such as those relating to overhead, provides as follows:

"Overhead cost increase is computed by applying the formula for 'E_n' above. For purposes of this computation 'C' is the dollar amount of costs of insurance, outside legal and accounting fees, and inter-refinery transportation costs directly attributable to refinery operations, provided that such costs are computed according to the generally accepted accounting practices and historically and consistently applied by the firm for certified annual reports."

Thus, increased cost of insurance is an allowable overhead non-product cost increase.

Increased non-product costs, as set forth in the "E_n" factor in § 212.83, must be actually "incurred." An incurred cost must be a known obligation to pay a specific amount and not merely a cost which is anticipated to be incurred in the future and thus not susceptible of precise and definite quantification.[5] By increasing its deductible from $100,000 to $1 million, Mobil has not increased its insurance costs under § 212.83(c)(2)(iii)(E), but rather has merely increased its potential risk of loss by becoming a self-insurer for all losses up to $1 million. Any increase in the cost of insurance must be based on premiums under the insurance policy actually purchased by Mobil and cannot be attributed to a higher cost insurance policy that Mobil declined to purchase. For these reasons, we interpret the term "insurance" in the "overhead" category of non-product costs under § 212.83(c)(2)(iii)(E), to exclude "self-insurance" as proposed by Mobil.

By increasing its deductible from $100,000 to $1 million Mobil may well incur actual unindemnifiable losses which are larger, on the average, than those in prior years under the $100,000 deductible policies. However, only increases in certain specified categories of non-product costs may be passed through under the refiner price regulations. Although the number of such non-product categories was recently expanded in a rulemaking proceeding in which the question of recovery of non-product cost increases was thoroughly reviewed,[6] no non-product category covering unindemnifiable losses due to fire, negligence and similar events or occurrences was established. Furthermore, even if the regulations contained a general or miscellaneous non-product cost category which could be construed as including such losses, there would appear to be substantial difficulties in computing increased losses incurred. Due to the irregularity and unpredictability of such losses, it would appear necessary either to develop special rules for establishing average base period and current period losses to permit realistic measurement of increased losses incurred or to handle such matters on a case-by-case basis through the exceptions process. Accordingly, increased costs due to such losses (whether attributable to an increased deductible or otherwise) are not non-product cost increases within the meaning of § 212.83(c)(2)(iii)(E).

INTERPRETATION 1978-9

To: H. H. Weinert Estate.
Date: March 18, 1978.
Rules Interpreted: § 212.54, Ruling 1975-15.
Code: GCW—PI—Stripper Well Lease Exemption, Unitization, Definition of Property.

FACTS

H. H. Weinert Estate (Weinert) is a crude oil producer and operator of the Miller-Andrews lease in White County, Ill., and is subject to the price regulations set forth in 10 CFR Part 212, Subpart D.

On July 15, 1964, and until March 31, 1977, the Miller-Andrews lease was unitized with certain adjoining leases, fee interests, and units ("former unit components") to form the Weinert West Mill Shoals Unit ("the Unit") in order to enhance crude oil recovery. The unit agreement was terminat-

[5] See Standard Oil of California, 2 FEA ¶80,519 (January 29, 1975). See also 43 FR 5799 (February 10, 1978).

[6] See 41 FR 31863 (July 30, 1976), 42 FR 5023 (January 27, 1977).

ed on March 31, 1977. Prior to its termination the Unit was treated as a single property and its crude oil production qualified for the stripper well exemption.

Most of the wells located on the former unit components, other than the Miller-Andrews lease, have been abandoned due to declining production.

ISSUE

Whether crude oil produced from the Miller-Andrews lease qualifies for the price exemption applicable to "stripper well crude oil" under 10 CFR 212.54.

INTERPRETATION

All volumes of crude oil produced from the Miller-Andrews lease qualify as exempt stripper well crude oil, notwithstanding the termination of the unit agreement.

The price regulations applicable to producers of crude oil are applied on a property-by-property basis. For purposes relevant to this Interpretation, "property" is defined, in 10 CFR 212.72, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest."

Ruling 1975-15 (40 FR 40832, September 4, 1975) makes it clear that a pre-1972 unitization of previously separate "properties" generally gives rise to a single "property," for purposes of the crude oil price regulations. As explained in Ruling 1975-15, "since the unit agreement signifies one right to produce crude oil arising from several leases or fee interests, the unit defines the property." Accordingly, inasmuch as the Unit was formed in 1964, it was appropriate to have treated the Unit as a single "property" for purposes of the crude oil price regulations.

Ruling 1975-15 also explained that—

"[T]he subdivision after 1972 (through assignment, creation of new leases, or otherwise) of a single right to produce crude oil into several rights to produce crude oil [does not] establish a new property * * *"

"Subdivision" includes termination after 1972 of a unit which previously qualified as a single "property." See Interpretation 1977-46, 42 FR 1481 (January 10, 1978). In such cases the "property," for purposes of the crude oil price regulations, remains the unit even though terminated. The price of crude oil produced and sold from the "property" is determined by treating the former unit components as though they contined to be a single "property." Therefore, the termination of the Unit (in this case in 1977) does not alter the "property" for purposes of the crude oil price regulations in 10 CFR Part 212, Subpart D. The frame of reference by which the crude oil price regulations are applied remains unchanged.

The price exemption provisions in 10 CFR Part 212, Subpart C, include a provision, § 212.54(a), which exempts from control the prices charged in the first sale of crude oil produced and sold from any "stripper well property." As defined in § 212.54(c), a "stripper well property" is a "property" whose average daily production of crude oil per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972. Pursuant to § 212.54, once a "property" has qualified for the exemption on the basis of its per-well production for any calendar year beginning after December 31, 1972, it retains that exemption permanently, "notwithstanding any increased production above the stripper well limit in a subsequent year" (41 FR 37599, September 7, 1976).

Thus, since the same underlying concept of "property" that applies under the crude oil price regulations in 10 CFR Part 212, Subpart D, applies to the stripper well property exemption in 10 CFR Part 212, Subpart C, we conclude that that exemption continues to apply to any and all production from the former unit components in this case, including the Miller-Andrews lease, regardless of current individual or aggregate unit component production levels.

INTERPRETATION 1978-10

To: Tesoro Petroleum Corp.
Date: March 24, 1978.
Rules Interpreted: §§ 211.67(d)(2) and 212.53(a).
Code: GCW—AI—Export Sales Deduction.

FACTS

Tesoro Petroleum Corporation (Tesoro) is a "small refiner" and "independent refiner" as defined in 10 CFR 211.51. The Tesoro refinery, located new Kenia Alaska, produces, among other things, low-sulphur residual fuel oil. Tesoro proposes to exchange on a one-time basis a specified quantity of low sulphur residual fuel oil manufactured at that refinery to a Japanese customer for consumption in Japan in return for an equal volume of low-sulphur residual fuel oil originating from a source outside the United States for consumption on the United States East Coast.

Tesoro proposes to deliver its residual fuel oil to its Japanese customer F.O.B. Kenai, Alaska, and will receive the corresponding matching volume of residual fuel oil F.O.B. New York, N.Y. or another East Coast port. It is anticipated that the time interval between the deliveries will be less than 30 days. Tesoro does not expect to either give or receive location, grade or other differentials. In the event that the volumes exchanged are not exactly the same, the party receiving the larger volume will compensate the other party at a rate to be negotiated at arms length and included in the executed exchange agreement.

ISSUE

Whether the proposed exchange constitutes an export sale of residual fuel oil under § 211.67 (d)(2), which requires each refiner to deduct from its volume of crude oil runs to stills under the entitlements program the volume of its export sales under § 212.53 of refined petroleum products and residual fuel oil.

INTERPRETATION

For the reasons set forth below, it has been concluded that the volume of residual fuel oil exchanged by Tesoro for export pursuant to this agreement would not be an export sale within the meaning of 10 CFR 212.53(a), and therefore the volumes exchanged are not required to be deducted from Tesoro's crude oil runs to stills under 10 CFR 211.67(d)(2), provided that the volumes of residual fuel oil exchanged are equal. If the volume of residual fuel oil delivered by Tesoro to the foreign customer exceeds the volume of residual fuel oil received in exchange by it, the difference in volume would constitute an export sale by Tesoro to be deducted from its crude oil runs to stills under the entitlements program by means of a retroactive adjustment.

10 CFR 211.67(d)(2) provides, in pertinent part, that:

"The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section [issuance of entitlements] and the calculations for the national domestic crude oil supply ratio shall be reduced by that refiner's volume of export sales under § 212.53 of Part 212 of this chapter in that month of refined petroleum products * * * and residual fuel oil, including sales to a domestic purchaser which certifies the product is for export * * *."

10 CFR 212.53(a) exempts "export sales" from the Department of Energy's (DOE) price regulations but does not define the term "export sales."

In Interpretation 1977-16 (42 FR 31151, June 20, 1977), it was pointed out that export sales under 10 CFR 212.53(a) are those which produce revenues from foreign sources. The Interpretation also found that the export sales exemption was adopted to allow export sales to be made at the highest possible prices. Thus, if Tesoro and the Japanese firm exchange the same volumes of residual fuel oil no export sale will occur because Tesoro will have received no sales revenue from a foreign source.

This case appears virtually identical to Interpretation 1977-36, *Guam Oil and Refining Company* (GORCO) (42 FR 54270, October 5, 1977), where it was found that a proposed time exchange of residual fuel oil between Guam and a foreign destination would not require an adjustment under the export sales deduction of § 211.67(d)(2) as long as the exchange was equal. Interpretation 1977-36 reasoned that:

"* * * the policy underlying the loss of entitlements for export sales under 10 CFR 211.67(d)(2), does not apply in this case. That statement of policy, set forth in the preamble to the amendments to that section issued on March 29, 1976 (41 FR 13899, April 1, 1976), notes that the entitlements program was established to equalize among all segments of the petroleum industry the benefits of access to lower priced domestic crude oil whose ceiling price is low in comparison to uncontrolled domestic or imported crude oil. Thus, the export deduction provision of the entitlements program is designed first to ensure that costs equalization benefits are not granted to the extent that a firm exports refined petroleum products or residual fuel oil and sells these products in the world market at uncontrolled prices and further to preserve the advantages of these costs benefits for domestic purchasers of petroleum products (id. at 13902). Allowing exported refinery products to earn entitlements would, in effect, constitute a subsidy to foreign oil consumers.

"Since GORCO does not propose any net export of residual fuel oil in this case, the cost equalization benefits of any and all entitlements it receives will be retained in the domestic economy. Therefore, no export sales deduction is required. However, if a net export of a small volume of such oil results from the failure of Firm X to deliver in exchange to GORCO as much residual fuel oil as GORCO delivers to Firm X, GORCO will be required to make a retroactive adjustment to its Form P-102-M-1 and reduce its crude oil runs to stills under the entitlements program by the net volume of residual fuel oil exported pursuant to the agreement."

This Interpretation does not reach the questions which would arise if the inclusion of Alaskan North Slope oil in the exchange were to trigger the "limitation on exports" provision of the Trans-Alaskan Pipeline Authorization Act (Pub. L. 93-153; November 16, 1973) which amends section 28 of the

Mineral Leasing Act of 1920 (30 U.S.C. 185) and/or provisions of the Export Administration Amendments of 1977 (Pub. L. 95-52; June 22, 1977), which prohibit certain petroleum exports unless established requirements are met.

Finally, although not raised by Tesoro, it should be noted that the entitlement reduction provisions of § 211.67(d)(4), as they apply to the supply of residual fuel oil into the East Coast market, would require Tesoro to report the exchange volumes landed in the East Coast market as "production * * * for sale" into that marketing area. In addition, the provisions of § 211.67(a)(3) would be inapplicable to the volumes of residual fuel oil landed by Tesoro into the East Coast market pursuant to the exchange arrangement outlined herein above.

APPENDIX II

DEPARTMENT OF ENERGY

OFFICE OF GENERAL COUNSEL

To the Assistant General Counsel for Interpretations and Rulings

Pursuant to the authority vested in me as the General Counsel of the Department of Energy ("DOE"), there is hereby delegated to the Assistant General Counsel for Interpretations and Rulings the authority to issue Interpretations of all DOE regulations, except those regulations relating to functions solely within the jurisdiction of the Federal Energy Regulatory Commission and except as such authority is delegated to other Assistant General Counsels, and to sign any documents relating to such Interpretations submitted to the FEDERAL REGISTER for publication.

The authority delegated herein shall not be further delegated, in whole or in part.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of DOE and the policies and procedures prescribed by the Secretary or his delegate(s).

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective April 6, 1978.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc. 78-9948 Filed 4-13-78; 8:45 am]

[6705-01]

Title 12—Banks and Banking

CHAPTER VI—FARM CREDIT ADMINISTRATION

PART 612—PERSONNEL ADMINISTRATION

General Rules For Banks and Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration, by its Federal Farm Credit Board, took final action to update its General Rules for the banks and associations of the Farm Credit System. These amendments are being made to (1) eliminate language that is no longer applicable; and (2) reflect the name change of the Office of Credit and Operations to the Office of Supervision, which occurred as a result of a reorganization of that office. These amendments will have no impact on the Farm Credit System.

EFFECTIVE DATE: April 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Jon F. Greeneisen, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza SW., Washington, D.C. 20578, 202-755-2181.

SUPPLEMENTARY INFORMATION: Since these amendments are editorial changes of a technical nature, it is found that notice of proposed rulemaking is unnecessary to the public interest.

Chapter VI of Title 12 of the Code of Federal Regulations is amended by revising §§ 612.2071(c), 612.2170 (c)(2) and (c)(4) and 612.2270 as follows:

§ 612.2071 Nondiscrimination in employment.

* * * * *

(c) Each Farm Credit institution which has 15 or more employees shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members customarily are posted a notice to be prepared or approved by the Equal Employment Opportunity Commission setting forth excerpts from or summaries of pertinent provisions of the Civil Rights Act of 1964 and information pertinent to filing a complaint.

§ 612.2170 Prohibited acts procedures.

* * * * *

(c) An officer of the bank is designated.

(1) * * *

(2) To report promptly in writing to the Deputy Governor, Office of Supervision, cases arising under paragraphs (a) through (g) thereof;

(3) * * *

(4) To submit a semiannual report in writing of such actions to the Deputy Governor, Office of Supervision.

§ 612.2270 Other reports to the Farm Credit Administration.

A report of any violation or possible violation of a regulation in this Subpart B shall be included in the loan transaction submission of any loan requiring the prior approval, advice, or counsel of the Deputy Governor, Office of Supervision. Such report shall be made even though the report required by § 612.2170 is filed. The bank shall assure that all directors, officers and employees shall be advised of the circumstances requiring reports under this section.

(Secs. 5.9, 5.12, 5.18, 85 Stat. 619, 620, 621.)

DONALD E. WILKINSON,
Governor,
Farm Credit Administration.

[FR Doc. 78-9957 Filed 4-13-78; 8:45 am]

[7535-01]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

PART 703—INVESTMENTS AND DEPOSITS

Loans and Lines of Credit to Other Credit Unions and Nonmember Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: These rules implement the provisions of the April 19, 1977, amendments to the Federal Credit Union Act (the Act) authorizing Federal credit unions to invest in loans and lines of credit to nonmember credit unions. These rules also update existing rules for investing in loans to other credit unions.

DATES: These regulations are to be effective May 1, 1978.

ADDRESSES: National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Joseph Bellenghi, Assistant Administrator for Examination and Insurance, at the above address. Telephone: 202-254-8760.

SUPPLEMENTARY INFORMATION: The amendments (Pub. L. 95-22, 91 Stat. 49) to the Act required changes in the regulation which governs loans to other credit unions. That regulation is amended to set out the conditions upon which Federal credit unions may establish lines of credit for other credit unions. If a line of credit is established then the investing Federal credit union must obtain certain financial information from the borrowing credit union annually. This requirement is similar to the requirement im-