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No. 75-1486

File

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

INDEPENDENT MEAT PACKERS ASSOCIATION, ET AL.,
Appellees,

v.

EARL L. BUTZ, SECRETARY OF AGRICULTURE, ET AL.,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIEF FOR THE FEDERAL APPELLANTS

REX E. LEE,
Assistant Attorney General,

DANIEL E. WHERRY,
United States Attorney,

ROBERT E. KOPP,
NEIL H. KOSLOWE,
Attorneys,
Appellate Section,
Civil Division,
Department of Justice,
Washington, D. C. 20530.



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BRIEF FOR THE FEDERAL APPELLANTS

PRELIMINARY STATEMENT

Earl L. Butz, Secretary of Agriculture, and Erwin L. Peterson and Andrew Rot, employees of the Department of Agriculture, the federal appellants in the above-styled case, appeal from the judgment of May 29, 1975 entered below by the Hon. Robert V. Denney, United States District Judge for the District of Nebraska. The judgment order and memorandum of decision are not officially reported. The jurisdiction of the district court was invoked under 28 U.S.C. 1331 (1970) (federal question) and the Administrative Procedure Act, 5 U.S.C. 702, 706 (1970) by

appellee Independent Meat Packers Association [the "Packers"] which alleged that the action arose under the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 et seq. (1970). The federal appellants invoked this Court's jurisdiction under 28 U.S.C. 1291 (1970) by timely filing a notice of appeal in the district court on July 2, 1975 and causing the appeal to be docketed in this Court on July 8, 1975. The appeal is being expedited pursuant to this Court's order of July 29, 1975.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in conducting a trial de novo on appellees' claims.

Bradley v. Weinberger, 483 F. 2d 410 (C.A. 1, 1973)

CPC International, Inc. v. Irvin, 515 F. 2d 1032 (C.A. 8, 1975)

CITIZENS TO PRESERVE OVERTON PARK v. VOLPE, 401 U.S. 402 (1971)

CAMP v. PITTS, 411 U.S. 138 (1973)

Dry Color Mfrs. Ass'n., Inc. v. Department of Labor, 486 F. 2d 98 (C.A. 3, 1973)

NATIONAL NUTRITIONAL FOODS ASS'N. v. WEINBERGER, 512 F. 2d 688 (C.A. 2, 1975)

National Petroleum Refiners Association v. Federal Trade Commission, 482 F. 2d 672 (C.A.D.C., 1973), certiorari denied, 415 U.S. 951 (1974)

2. Whether the promulgation of new meat grading regulations by the Secretary of Agriculture was arbitrary, capricious, an abuse of discretion, or in excess of statutory authority.

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)

MOURNING v. FAMILY PUBLICATIONS SERVICES, INC., 411 U.S. 356 (1973)

3. Whether the district court improperly enjoined implementation of the new meat grading regulations on the ground that the Secretary failed to comply with Executive Order No. 11821.

MANHATTAN-BRONX POSTAL UNION v. GRONOUSKI, 350 F. 2d 451 (C.A.D.C., 1965)

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)

STATEMENT OF THE CASE

A. Nature of the Case, Proceedings Below, and Disposition.

The plaintiff Packers brought this action to enjoin implementation of revised meat grading regulations promulgated by the Secretary of Agriculture on March 12, 1975 and scheduled to have gone into effect on April 14, 1975. The Packers challenge the part of the revisions which provides that beef carcasses voluntarily submitted to the Department of Agriculture for "quality grading" automatically will undergo "yield grading" as well. They also challenge the promulgation of the revisions generally, on the ground that the Secretary allegedly failed to evaluate their inflationary impact as required by Executive Order No. 11821, issued by President Ford on November 24, 1974. Other parts of the revisions, particularly the revision in the "quality grade" standards, are under challenge as well due to the intervention below of the National Association of Meat Purveyors ["Purveyors"], the National Livestock Feeders Association ["Feeders"], the National Restaurant Association ["Restaurants"], and a group of consumer and labor organizations headed by the Consumer Federation of America ["Consumer Group"]. The revisions are being defended by the Secretary and by the American National Cattlemen's Association ["Cattlemen"] who successfully intervened as defendants below.

On April 11, 1975, the district court entered a preliminary injunction barring implementation of the revised regulations. On the Government's emergency appeal, this Court affirmed, but remanded the case to the district court for a hearing and final decision within 45 days. Independent Meat Packers Association v. Butz, No. 75-1244 (C.A. 8, April 15, 1975). On the remand, the district court, after a full trial, entered judgment for the plaintiffs and enjoined implementation of all revisions to the regulations. The Secretary accordingly prosecutes this appeal.

B. The Relevant Facts.

1. The Federal Meat Grading Program. In order to explain the factual context of this case, it is necessary that we briefly review the development of the federal meat grading program.

The early markets in this country were highly localized, and almost all beef trading was based on personal inspection of the beef by the buyer. Even then a distinct terminology was used in each market area to describe trade preferences. The growth of large urban centers and the improvement in shipping facilities stimulated the rapid expansion of large competitive markets and the organization of meat packing companies. As a result, the need arose for a nationally recognized system of classes and grades for livestock and beef in order that prices among

competitive markets could be equitably compared and trading could be done without personal inspection. It was felt that such a system, which would reliably identify the quality of beef, would also stimulate consumer demand for high quality beef and provide an economic incentive for the production of such beef. In order to satisfy these needs the Department of Agriculture inaugurated federal meat grading on a voluntary, fee-for-service basis on July 1, 1928, and except for two brief periods during World War II and the Korean conflict, when federal meat grading was mandatory, this voluntary program has continued in effect. Congress ratified the Secretary's authority to conduct this program in the Agricultural Marketing Act of 1946, 7 U.S.C. 1622(h). ^{1/}

Under the regulations presently in force, 7 C.F.R. Part 53, the Department of Agriculture grades beef carcasses as a service to meat packers who purchase it. Federal graders, whose base hourly rate of pay is \$14.60 per hour for work performed during the daytime (7 C.F.R. 53.29(a)), evaluate beef carcasses to determine their "quality grade" and their "yield grade", and packers have the option of requesting either or both of these grades (7 C.F.R. 53.102(a)).

The quality grade of a beef carcass is based on two general criteria: (1) the palatability-indicating characteristics of the meat -- i.e., tenderness, juiciness, and

^{1/} The brief history related above is drawn from Pierce, Hallett & Murphey, Classification and Grading of Meats, in Introduction to Livestock Production 683-684 (H. Cole ed. 1966), the standard treatise in the field.

flavor -- and (2) the conformation of the carcass. 7 C.F.R. 53.102(k). There are two important palatability-indicating characteristics: marbling and maturity. Marbling refers to the interspersions of fat within the muscles; maturity refers to the size, shape, and ossification of the bones and cartilages, and to the color and texture of the flesh. 7 C.F.R. 53.102(m). There are nine degrees of marbling (in descending order: abundant, moderately abundant, slightly abundant, moderate, modest, small, slight, traces, and practically devoid) and five maturity groups (in ascending order: A, B, C, D, and E). 7 C.F.R. 53.102(q). Under the present regulations, increasing marbling and advancing maturity are deemed to have opposite effects on the palatability of meat: the higher the degree of marbling (i.e., the more abundant the amount of flecks of fat within the muscles) the more palatable the meat, while the higher the maturity group the less palatable the meat. 7 C.F.R. 53.102(r). Because of this, the federal standards permit increased marbling to compensate, within certain limits, for advanced maturity in the grading process. Thus, for example, a very young beef carcass with a slightly abundant degree of marbling will achieve the same quality grade as a somewhat older carcass with a moderately abundant degree of marbling.

The second criterion upon which the quality grade is based, the conformation of the carcass, is not at all related to the palatability-indicating characteristics of the meat. See 7 C.F.R. 53.102(b). Rather, it is determined

by a visual examination of the shape and appearance of the carcass. A beef carcass with superior conformation will have thick muscling, a high proportion of meat to bone, and a very plump, full, and well-rounded appearance. 7 C.F.R. 53.102(1). The conformation evaluation is useful for estimating the percentage of trimmed retail cuts a carcass will yield. Id.

There are eight federal quality grades for most beef carcasses. They are, in descending order: Prime, Choice, Good, Standard, Commercial, Utility, Cutter, and Canner. 7 C.F.R. 53.104. To arrive at the final grade the grader must combine the palatability rating with the conformation rating, and the relative importance of the two criteria varies with grade. Thus in the highest grades superior conformation cannot compensate for inferior palatability, while in the lower grades it can to a limited extent. On the other hand, in all grades superior palatability can compensate for inferior conformation. For example, the final quality grade for a beef carcass of minimum Prime rated palatability and minimum Good rated conformation would be Choice. 7 C.F.R. 53.102(s).

The federal yield grade standards were adopted only ten years ago, on June 1, 1965, and they have been described as "perhaps the most significant change made in the grading of beef since its inception". 2/ The yield grade standards grew out of the recognition by the Department of Agriculture

2/ Pierce, Hallet & Murphey, supra, note 1, at 694.

in the early 1950's that the meat industry needed an accurate tool for measuring the relative retail yields of beef carcasses. 3/ Over a ten year period numerous studies involving hundreds of beef carcasses were conducted. These studies proved, among other things, that variations in yields of usable meat among beef carcasses probably had a greater effect on their economic value than did variations in their palatability-indicating characteristics. 4/ As a result of the studies the Department devised a mathematical equation for estimating retail yield or "cutability", based largely on factors that can be measured objectively. These factors are: (1) the amount of external fat, (2) the amount of kidney, pelvic, and heart fat, (3) the area of the ribeye muscle, and (4) the hot carcass weight. 7 C.F.R. 53.102(u). The most important factor is the amount of external fat; for each four-tenths inch of additional fat thickness the yield grade drops by one full grade. 7 C.F.R. 53.102(v). The yield grade also drops with increasing kidney, pelvic, and heart fat and increasing carcass weight, but it rises with increasing ribeye area. 7 C.F.R. 53.102(w-y). 5/

In 1966, the first year that yield grades were available, only 3 1/2% of the beef carcasses that were quality

3/ Id.

4/ Id.

5/ The mathematical equation is: Yield grade = 2.50 + (2.50 x adjusted fat thickness, inches) + (0.20 x percent kidney, pelvic, and heart fat) + (0.0038 x hot carcass weight, pounds) - (0.32 x area ribeye, square inches). 7 C.F.R. 53.103(a).

graded were also yield graded. Since that time, however, there has been a dramatic increase in the use of yield grades, and in 1974 nearly 70% of the beef carcasses that were quality graded were yield graded as well. ^{6/}

The standards used in the federal meat grading program are continuously reviewed by technicians in the Department of Agriculture to determine if revisions are necessary. ^{7/} Major revisions were made in 1939, 1941, 1949, 1950, 1956, 1965, and 1973. ^{8/} Revisions are proposed, primarily, when new research discloses ways to improve the accuracy of the federal grades; significant changes occur in the kind of cattle produced; variations develop in consumer preferences for beef; or the need arises to clarify the standards. ^{9/} Most of the grade standards research in recent years has been done at the experiment stations of the land-grant universities, often in cooperation with the Agricultural Research Service of the Department of Agriculture.

2. The Facts of this Case. On September 11, 1974 the Secretary, through the Administrator of the Agricultural Marketing Service of the Department of Agriculture, appellant Edwin L. Peterson, caused notice to be filed in the Federal

^{6/} Affidavit of W. Edmund Tyler, Exhibit No. 1 to federal defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (Filing No. 57), at 6.

^{7/} Id. at 4.

^{8/} Id. at 2.

^{9/} Id. at 4.

Register of proposed changes in the standards for federal meat grading, in accordance with 5 U.S.C. 553 (informal rulemaking). 39 Fed. Reg. 32743. ^{10/} Five important changes were proposed.

First, the Secretary proposed to eliminate conformation as a criterion upon which to base the quality grade. He pointed out that there was "no information which indicates that variations in conformation are related to differences in beef's palatability", and he suggested that the quality grades would "more useful and reliable guides to aid consumers in purchasing the kind of beef they prefer" if they reflected a single criterion: palatability. 39 Fed. Reg. 32743 (1974). ^{11/}

At the same time, the Secretary acknowledged that the most important factor affecting the economic value of a beef carcass, apart from its palatability, was its yield of retail meat, or "cutability". Indeed, he noted that carcasses of the same quality grade were known to vary in value by as much as \$75 due to differences in yield. Although the Secretary recognized that the conformation evaluation was designed to provide an estimate of this yield, he determined that yield "is more accurately measured and reflected by the yield grades than by subjective evaluations of conformation." ^{12/} Accordingly, to insure

^{10/} Defendants' Exhibit No. 505.

^{11/} Id. at 1.

^{12/} Id.

that the federal meat grading program continued to measure the vital characteristics affecting value, the Secretary proposed that his official grade, which would continue to be available upon request, would identify both the quality grade and yield grade appropriate to the carcass submitted for grading. ^{13/} In other words, there would continue to be no requirement that meat must be graded; but if it were graded, it would be graded for both quality and yield.

Next, the Secretary observed that recent research had shown that within the youngest maturity group for beef carcasses (i.e., the A group) palatability did not significantly change with advancing maturity. Therefore, the Secretary determined that it was no longer necessary to require that increased marbling compensate for advancing maturity for beef carcasses in the A maturity group, and he proposed that any beef carcass in the A maturity group with the minimum degree of marbling to qualify for the Prime, Choice, Good, or Standard quality grade would receive that grade regardless of its actual maturity. ^{14/} Increased marbling was still required to compensate for advancing maturity for beef carcasses in the B maturity group, but the minimum degree of marbling required for each quality grade was lowered by one degree, in keeping with the effective lowering of the marbling requirements for carcasses in the A maturity group. ^{15/}

^{13/} Id.

^{14/} Id. at 2.

^{15/} Id.

Fourth, the Secretary decided to change the Good quality grade by making it more uniform and restrictive so that consumers could use it to identify beef that did not have much internal or external fat but was still palatable.

Accordingly, he proposed to raise by one-half degree the minimum degree of marbling required for beef carcasses in the A maturity group to qualify for the Good grade. ^{16/}

Finally, to further enhance the uniformity of the "new" Good grade, the Secretary proposed to limit it to beef carcasses in the A and B maturity groups, as was the case with the Prime and Choice grades. The same limitation was proposed for the Standard grade. ^{17/}

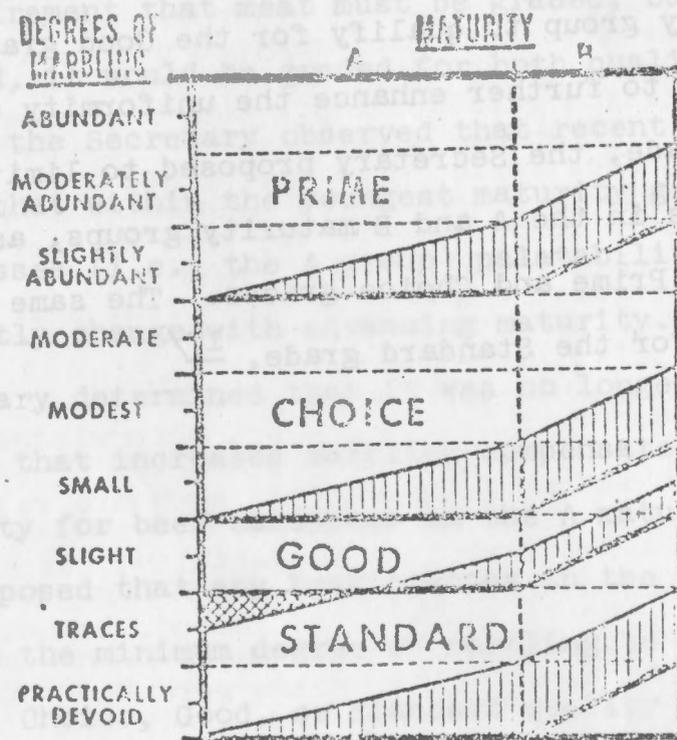


^{16/} Id.

^{17/} Id.

The following chart depicts the proposed changes in the marbling-maturity requirements:

PROPOSED CHANGES IN THE RELATIONSHIP BETWEEN MARBLING, MATURITY, AND QUALITY GRADE



||||| Areas which would be included in the next higher grade.
 Area which would be changed from Good to Standard.

After the revisions were proposed the Secretary solicited the views of all interested persons and conducted regional briefings for consumers, media representatives, and members of the meat industry in Washington, New York, Chicago, Dallas, Atlanta, and San Francisco. 40 Fed. Reg.

11535 (Add. 14a). ^{18/} A record number of comments was received (Add. 15a).

The proposal to require that beef carcasses graded for quality automatically be graded for yield as well was favored by cattle producers, institutional users, and meat scientists, but was strongly opposed by most meat packers. The packers contended that the proposal would increase grading costs, borne by the packers; hamper the packers' ability to market certain types of carcasses; preclude the grading of carcasses from which excess fat had been trimmed, since yield grading can be performed only if the excess fat is still on the carcass; preclude the grading of certain wholesale cuts for which yield grade standards have not been devised as yet; and require the use of an insufficiently accurate yield grade formula.

(Id.). The proposal to change the marbling-maturity requirements was strongly favored by cattle producers, meat packers, and meat scientists, but was opposed by most consumers, some feeders, and practically all institutional users. (Id.). Those opposed feared that there would be a significant reduction in the palatability of Prime and Choice beef and that buyers would end up paying "Choice grade prices for Good grade beef". (Id.).

The Secretary carefully considered the comments and recommendations submitted, and then, through appellant

18/ Defendants' Exhibit No. 504.



Peterson, he caused the proposed revisions, with minor modifications, to be published in the Federal Register on March 11, 1975, and announced that they would go into effect on April 14, 1975 (Add. 25a).

The Secretary gave a detailed explanation for his decision in a three-page "Statement of Considerations" published together with the new regulations (Add. 14a-17a). In response to the objections of the meat packers to the yield grading revisions, the Secretary predicted that there would be no material increase in grading costs since the time saved by the elimination of the conformation evaluation and considerations of maturity change for young carcasses would offset any additional time required by yield grading, and since 70% of all beef graded for quality is already graded for yield. (Add. 16a). He acknowledged that the revisions might hamper the packers' ability to market low yielding carcasses, but he declared that the industry-wide benefits of the yield grading revisions far outweighed this alleged problem. (Id.). The Secretary noted that the revised regulations would not permit grading carcasses from which excess fat had been trimmed and grading of certain wholesale cuts, but he concluded that the number of such carcasses and cuts was insubstantial. (Add. 16a-17a). Finally, he reported that the research showed that the current yield grade formula measured differences in yield with a higher degree of accuracy than any other practical and available system. (Add. 17a).

In response to the objections to the changes in the marbling-maturity requirements, the Secretary referred to six different research studies which showed that for beef up to 30 months of age, changes in maturity did not have a sufficiently significant effect on palatability to justify requiring an increase in marbling to maintain the same quality grade. (Add. 15a). He therefore rejected the contention that the changes would reduce the palatability of Prime and Choice beef. Next, the Secretary pointed out that the lowering of the marbling requirements was expected to lower production costs for Prime and Choice beef and encourage their production. Since the palatability of the beef would be unchanged, the demand should be unchanged, and the increased supply could be expected to cause prices to drop. (Add. 16a). He therefore rejected the contention that the changes would result in higher prices for less palatable beef.

At the conclusion of the "Statement of Considerations" the Secretary, through appellant Peterson, certified that "the inflationary impact of these revisions of the grade standards has been evaluated". (Add. 25a).

C. This Litigation. The Packers commenced this lawsuit by filing a complaint in the district court on April 1, 1975 seeking declaratory and injunctive relief against the part of the revisions providing that beef carcasses submitted for "quality grading" automatically would undergo "yield grading" as well; in the alternative, the Packers sought

declaratory and injunctive relief against the revisions in their entirety. A hearing on the Packers' application for a preliminary injunction, which accompanied the complaint, was held in the district court on April 11, 1975. At the conclusion of the hearing the court granted a preliminary injunction against the revisions in their entirety. (Order of April 11, 1974)(Filing No. 6). The court found that the revisions would cause the Packers "substantial and irreparable harm" by increasing their grading costs and restricting their ability to trim and sell excess fat. The court also expressed "serious questions" about the sufficiency of the Secretary's inflationary impact evaluation under the terms of Executive Order No. 11821.

The Government's application for a stay pending appeal was denied by the district court and subsequently denied by Judge Lay of this Court who, however, referred it to a panel of this Court for a hearing on April 15, 1975. At the conclusion of the hearing this Court, ruling that the district court did not abuse its discretion in granting the preliminary injunction, affirmed that order, but this Court remanded the case to the district court for a "plenary hearing" and final decision within 45 days. Independent Meat Packers Association v. Butz, No. 75-1244 (C.A. 8, April 15, 1975).

When the case returned to the district court the Purveyors, Feeders, Restaurants, Consumer Group, and

Cattlemen successfully intervened. The Government moved for summary judgment (Motion of Government for Dismissal or Alternatively for Summary Judgment)(Filing No. 57), but the court declined to rule on it, and instead directed the parties to go to trial (Tr. 141, 173).^{19/} A two-week trial followed, generating 17 volumes of testimony and hundreds of exhibits.

After considering all the evidence the district court entered an order on May 29, 1975 denying the motions for summary judgment and enjoining the implementation of the revisions to the meat grading regulations in their entirety (Order of May 29, 1974)(Filing No. 88).

In a memorandum of decision accompanying the final order (Memorandum of May 29, 1975)(Filing No. 87), the district court first found that the Secretary had "substantial evidence" upon which to revise the marbling-maturity requirements for the quality grade. (Memorandum, p. 6). This finding disposed of the Consumer Group challenge to the revisions and the principal challenge of the other plaintiff intervenors.

Next, the court addressed itself to the yield grading revisions, and it focused on the provision in 7 U.S.C. 1622(h) that "no person shall be required to use the service authorized by this subsection". The court understood the Secretary's contention to be that the phrase "service authorized by this subsection" encompassed all possible

^{19/} The designation "Tr." refers to the pages of the transcript of the proceedings in the district court from May 12, 1975 to May 23, 1975.

grading services, so that the Department was authorized to "bundle" grading services together and persons wishing to use these services could choose only to accept or reject the entire "bundle". (Memorandum, p. 13). The court found this construction of 7 U.S.C. 1622(h) to be "unfounded" and "erroneous". (Id.). In the court's view, the Secretary's "own definitional regulations" and "the voluntary tone of Section 1622" prohibited the Secretary from bundling yield grading quality grading and offering the two as a package "service" to be accepted or rejected by meat packers. Secondly, the court determined that there was "no necessity for compulsory yield grading, as a substantial portion of all meat is yield graded under the old regulations and no appreciable benefit will result from compulsion". (Id.). For these two reasons the court struck the yield grading revisions.

Finally, the court turned to Executive Order No. 11821, which calls upon federal agencies to evaluate the inflationary impact of major proposals for legislation and rulemaking. The court rejected the Government's argument that enforcement of this executive order was a matter for the President and not the courts. (Memorandum, p. 15). The court held that the evaluation required by Executive Order No. 11821 was in effect required as well by 7 U.S.C. 1621, a provision setting forth the purpose of the Agricultural Marketing Act of 1946, and that in light of this and the

"substantive nature" of the executive order, the court was empowered under the Administrative Procedure Act to enforce the executive order. (Id.). The court then found that the Secretary's inflationary impact evaluation was deficient under the terms of the executive order, as the court construed those terms, and ruled that consequently the revisions had to be set aside in their entirety. (Memorandum, p. 16).

STATUTES, REGULATIONS, AND EXECUTIVE DIRECTIVES INVOLVED

The relevant portions of the statutes, regulations, and executive directives involved in this case are set forth in the Addendum ["Add."] to this brief.

ARGUMENT

Summary.

Under the guidelines laid down by the Supreme Court in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971) and Camp v. Pitts, 411 U.S. 138 (1973), the judiciary has an important, but limited, role in the review of informal agency rulemaking. When called upon to review rulemaking of this sort, the courts must ultimately decide whether the agency acted arbitrarily, capriciously, or unlawfully. In making this decision the reviewing court must scrutinize the facts before the agency and assess whatever explanations the agency articulated at the time it promulgated the regulations to determine if the agency considered the relevant factors and made a reasonable judgment. There is no warrant for an evidentiary hearing of any kind unless the administrative record fails adequately to disclose the basis or purpose of the agency's action. In such a situation the court should obtain from the agency, through affidavits or testimony, any additional explanation necessary. Of course, if the agency's judgment, however explained, cannot be sustained by the administrative record under the appropriate standard, it should be vacated and the matter remanded to the agency for further consideration. But the reviewing court is not empowered to substitute its judgment for that of the agency.

The district court ignored these guidelines in reviewing the revised meat grading regulations promulgated by the Secretary. Instead of initially scrutinizing the comprehensive administrative record, including the detailed statement of reasons published by the Secretary contemporaneously with the promulgation of the revisions, the court insisted at the outset on conducting a trial de novo. This trial was used by the parties simply to ventilate the identical policy and empirical issues previously ventilated by them before the Secretary, and the court clearly erred in requiring it.

The court below also erred as a matter of law in setting aside the yield grading revisions. The Secretary has wide discretion to promulgate such grading regulations as he believes will promote the efficient and economical production, marketing, and consumption of domestic beef, and both the administrative and trial records amply demonstrate that the Secretary considered all the relevant factors and made a reasonable judgment in promulgating the revisions. The district court's belief that there was "no necessity" for the revisions, and that "no appreciable benefit" will result from their adoption, should not have entered into its decision here.

Finally, the court exceeded the proper bounds of judicial review in attempting to enforce Executive Order No. 11821. The enforcement of this order, which involves internal executive administration, should be left to the

President. In any event, the President has acquiesced in the Secretary's performance under Executive Order No. 11821, and it was surely not for the district court to demand more.

I

THE DISTRICT COURT ERRED IN CONDUCTING
A TRIAL DE NOVO ON APPELLEES' CLAIMS

Under 7 U.S.C. 1622(h) the Secretary is authorized to "identify the class, quality, quantity, and condition" of agricultural products shipped in interstate commerce "under such rules and regulations" as he may prescribe. Since the Secretary is not required to hold a trial-type hearing before promulgating such rules and regulations, he may use the informal rulemaking technique prescribed by the Administrative Procedure Act, 5 U.S.C. 553(c). The Secretary used this technique in promulgating the revisions in the meat grading regulations at issue here. See 39 Fed. Reg. 32743. It is settled that the appropriate standard for review of informal agency rulemaking is whether it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law", as specified in the Administrative Procedure Act, 5 U.S.C. 706(2)(A). Camp v. Pitts, 411 U.S. 138 (1973); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971); CPC International, Inc. v. Train, 515 F.2d 1032 (C.A. 8, 1975); National Nutritional Foods Ass'n. v. Weinberger, 512 F.2d 688 (C.A. 2, 1975); Bradley v. Weinberger, 483 F.2d 410 (C.A. 1, 1973).

In Overton Park the Supreme Court explained how a reviewing court should apply the arbitrary and capricious standard of review to informal, nonadjudicatory agency decisionmaking. 401 U.S. at 415-417. First, the court must determine whether the agency acted within the scope of its statutory authority. Next, it must conduct a "searching and careful" inquiry into the facts to determine whether the agency decision "was based on a consideration of the relevant factors" and did not involve "a clear error of judgment". Id. at 416. Finally, the court must determine whether the agency followed the proper procedure. If the administrative record, upon which the review is to be made, does not disclose the basis for the agency's decision, the reviewing court "may require the administrative officials who participated in the decision to give testimony explaining their action." Id. at 420. However, "where there are administrative findings that were made at the same time as the decision . . . there must be a strong showing of bad faith or improper behavior before such inquiry may be made." Id. Under no circumstances may the reviewing court "substitute its judgment for that of the agency." Id. at 416.

The Supreme Court reiterated and expanded upon these guidelines in Camp v. Pitts, supra. That case involved a decision by the Comptroller of the Currency to deny a national bank charter. The decision was based on information received from a national bank examiner and various

interested parties and upon a supplemental field examination. The basis for the decision was stated at the time it was made in letters to the applicants. The applicants brought an action in district court to review the decision, and the district court granted summary judgment against them, holding that de novo review was not warranted and that the Comptroller's decision was neither arbitrary nor capricious. The court of appeals remanded for a trial de novo on the ground that the basis for the Comptroller's decision was not stated with sufficient clarity to permit judicial review.

The Supreme Court summarily vacated the judgment of the court of appeals. It pointed out that since the Comptroller was not required to hold a hearing or make formal findings in an adjudicatory proceeding, and since the unsuccessful charter applicants were not suing to enforce administrative action, "the proper standard for judicial review of the Comptroller's adjudications is not the 'substantial evidence' test which is appropriate when reviewing findings made on a hearing record, 5 U.S.C. § 706(2)(E). Nor was the reviewing court free to hold a de novo hearing under § 706(2)(F) and thereafter determine whether the agency action was 'unwarranted by the facts'." 411 U.S. at 141. Rather, "the appropriate standard for review was . . . whether the Comptroller's adjudication was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' as specified in

5 U.S.C. § 706(2)(A)." Id. at 142. "In applying that standard," said the Court, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Id. Accordingly, the Court set aside the appellate court's remand instructions directing de novo review. It added that if the Comptroller failed adequately to explain the basis for his decision, "the remedy was not to hold a de novo hearing but, as contemplated by Overton Park, to obtain from the agency, either through affidavits or testimony, such additional explanation of the reasons for the agency decision as may prove necessary." Id. at 143. But the Court warned against such a step if the Comptroller's essential finding could be discerned from the administrative record, and pointed out that "[i]f that finding is not sustainable on the administrative record made, then the Comptroller's decision must be vacated and the matter remanded to him for further consideration." Id.

In the present case, unlike Overton Park and Camp v. Pitts, provisions of 5 U.S.C. 553(c) governing informal rulemaking were closely followed. After publishing notice of the proposed revisions in the meat grading regulations, the Secretary allowed a 90-day period for interested parties to submit comments and recommendations and conducted regional briefings across the country. See supra, p. 14 .

The public, including the appellees, were "give a significant opportunity prior to promulgation of . . . [the] . . . rule[s] to ventilate the policy and empirical issues at stake". National Petroleum Refiners Association v. Federal Trade Commission, 482 F.2d 672, 692 (C.A.D.C., 1973), certiorari denied, 415 U.S. 951 (1974). Indeed, the appellees took advantage of this opportunity to raise before the Secretary the very issues they raised in the district court. See Add. 15a-17a. After carefully considering the record number of submissions, the Secretary published along with the final revisions a detailed, three-page "Statement of Considerations" thoroughly explaining the basis for the new regulations and the reasons for his acceptance of some of the recommendations he received and his rejection of others (Add. 14a-17a).

Under these circumstances it is extraordinary that the district court insisted that the parties go to trial. Plainly Overton Park and Camp v. Pitts teach that it was the district court's task to scrutinize the voluminous and unstinting administrative record to determine if the Secretary considered the "relevant factors" and did not make "a clear error of judgment" in promulgating the revised meat grading regulations. "Courts are to determine whether an agency's action was arbitrary or capricious in light of the information it confronted. It is a re-view, a second look at the same material, not a re-doing."

Bradley v. Weinberger, supra at 415. Accord, Dry Color

Mfrs. Ass'n., Inc. v. Department of Labor, 486 F.2d 98, 104 n. 8 (C.A. 3, 1973). In view of the "Statement of Considerations" published contemporaneously with the promulgation of the revisions, there was not even occasion to call for additional agency explanation through affidavits or testimony.

The Second Circuit recently dealt with the method of reviewing informal agency rulemaking in National Nutritional Foods Ass'n. v. Weinberger, supra. There the Secretary of Health, Education and Welfare used the informal rulemaking technique to promulgate regulations classifying two types of vitamin preparations as prescription drugs. Producers and vendors of the preparations brought suit in the district court seeking declaratory and injunctive relief against the regulations, claiming that the Secretary was without authority to promulgate them and that, in any event, he improperly classified the preparations. The plaintiffs contended, inter alia, that they were entitled "to a de novo trial in the district court of factual issues going to the basis of the regulations", id. at 691, and that the regulations should be reviewed under the "substantial evidence" test. The district court rejected these contentions, and so did the Second Circuit. It held that the Secretary was authorized to use the informal rulemaking technique to promulgate the regulations at issue and noted that this technique "has been generally recognized as adequate for the purpose of airing issues, evidence, and

relevant factors to be considered by an agency in determining whether a rule is to be promulgated and, if so, its terms." Id. at 700. It further held that the "arbitrary, capricious" rather than the "substantial evidence" standard was the appropriate one by which to review the regulations. Id. Finally, it held that there was no warrant for the district court to conduct a de novo evidentiary hearing, and that the review was properly conducted on the basis of the administrative record compiled by the Secretary. Id. at 701.

In sum, the district court should have resolved the issues raised below on the Government's motion for summary judgment, and it manifestly erred in conducting de novo review. ^{20/}

II

THE PROMULGATION BY THE SECRETARY OF THE REVISED MEAT GRADING REGULATIONS WAS NOT ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION, OR IN EXCESS OF STATUTORY AUTHORITY.

As we discussed in Part I, supra, pp. 24-30, the promulgation by the Secretary of the revised meat grading

^{20/} It is not entirely clear what standard the district judge used to review the revised meat grading regulations. At the beginning of the trial he seemed to indicate that he was going to apply a hybrid arbitrary, capricious - substantial evidence standard: ". . . I do think that I am required to consider substantial evidence as to whether the Secretary's action was arbitrary and capricious . . ." (Tr. 50). Yet in the memorandum of decision the court ruled that the revisions had to be set aside pursuant to 5 U.S.C. 706(2)(A) (Memorandum, 14, 16), which is the citation to the "arbitrary, capricious" standard. Whatever the standard the court did apply, the correct standard which the district court should have applied is the "arbitrary, capricious" standard. See supra, p. 24.

regulations by the technique of informal rulemaking is reviewable under the "arbitrary, capricious" standard specified in 5 U.S.C. 706(2)(A), and in applying this standard the reviewing court must determine from the administrative record whether the Secretary considered the "relevant factors" and made no "clear error of judgment". The reviewing court must also determine whether the promulgation of the regulations was in excess of statutory authority. 5 U.S.C. 706(2)(C). In this regard the Supreme Court has held that where enabling legislation empowers an agency to make such rules and regulations as may be necessary to effectuate its provisions, the validity of a regulation promulgated thereunder must be sustained "so long as it is 'reasonably related to the purposes of the enabling legislation'". Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973).

Congress has provided that the Secretary must conduct the federal meat grading program "to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire". 7 U.S.C. 1622(h). Moreover, in conducting this program the Secretary must "develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." 7 U.S.C. 1622(c). Thus the "relevant factors" which the

Secretary is bound to consider in promulgating the revised meat grading regulations are market conditions, industry and consumer preferences, and the results of continuing scientific research concerning the accuracy and usefulness of the federal meat grading standards.

In other words the Secretary's revisions here reflect no "clear error of judgment" if they are supported by research and can reasonably be expected to facilitate marketing and help consumers. As we shall now show, this is the case.

The administrative record overwhelmingly demonstrates that the promulgation by the Secretary of the revisions in the meat grading regulations was not arbitrary, capricious, or an abuse of discretion. The trial record, though superfluous, demonstrates the same thing.

A. Marbling-Maturity Revisions.

In the "Statement of Considerations" accompanying the revisions the Secretary explained that every segment of the meat industry had suggested changes in the standards for the "quality grade" (Add.15a). He pointed out that the Department of Agriculture "has continually encouraged and otherwise supported research designed to identify and evaluate the factors that affect beef palatability and a considerable amount of such research has been conducted". (Id.). While this research confirmed that the two most important palatability-indicating characteristics were marbling and maturity, it indicated that "as beef increases

in maturity within the youngest maturity group referenced in the standards, an increase in marbling is not necessary to insure a comparable degree of palatability". (Id.).

The Secretary specifically referred to six of the recent scientific studies on the subject (id.), all of which were part of the administrative record. (Defendants' Exhibits Nos. 633, 650, 668, 661, 608, 621). As the district court expressly found (Memorandum, p. 6), these six studies alone provided the Secretary with "substantial evidence upon which to decide to change the maturity-marbling relationship, and to fix that change at the levels reflected in the new rules." At the trial in the district court none of the appellees introduced any scientific research to contradict the research relied upon by the Secretary, and none of their witnesses could cite a single relevant study that was not part of the administrative record. (Tr. 733-735, 790, 865, 957-958). On the contrary, one of the appellees' leading expert witnesses, Dr. Harold J. Tuma, testified that the results of the studies were valid. (Tr. 907-908). Dr. Tuma questioned only whether the minimum requirements for each quality grade, which have remained unchanged since 1950 and were not affected by the new revisions, were properly fixed. (Tr. 908, 1936-1937). The Government also presented expert testimony showing that the Secretary's revisions were fully supportable by the available research. (Tr. 1342-1346).

The Secretary also observed in the "Statement of Considerations" that the revisions "should reduce the general fatness of beef in each of these grades and also make the palatability of beef in each grade more uniform -- factors which are particularly important to consumer acceptability". (Add. 15a). It was for this very reason that the Center for Study of Responsive Law, Ralph Nader, Trustee, in its publication "Consumer Protection Report," recommended in an issue contained in the administrative record that the marbling-maturity requirements be changed. (Defendants' Exhibit No. 671). In an article entitled "U.S. Fat, Fatter, Fattest" the Center wrote that "[c]hanging the present beef grading system along the lines of reducing the amount of internal fat of the retail grades would probably help reduce the incidence of heart disease in this country without significantly lowering the quality of the meat". (Id. at 4).

The Secretary duly noted in the Statement both the strong support the revisions received from cattle producers, meat packers, and university meat scientists and the opposition of some cattle feeders, most consumers, and practically all representatives of hotels, restaurants, and institutions. (Add.16a). He acknowledged that the opposition was based on the fear that there would be a reduction in the palatability of Prime and Choice beef and that consumers would have to pay "Choice grade prices for Good grade beef". (Id.). These were the very same concerns

raised again at the district court trial by the Purveyors, Feeders, and Restaurants. (Tr. 568, 604-606, 625, 686, 689-690, 754, 845, 1883). ^{20/} The Secretary explained that he rejected the opposition because the best research available demonstrated that the revisions would not lead to a detectable difference in palatability and because he had been advised by his economic experts that they would not cause an increase in the price of Prime and Choice beef. (Add. 16a). He concluded that "the changed marbling-maturity relationship should provide greater uniformity of eating quality within each of the grades and thereby enhance consumer satisfaction and confidence in grades". (Id.).

The administrative record fully supports the Secretary's economic observation. See Defendants' Exhibits Nos. 513, 514. In response to the refrain that as a result of the revisions consumers will end up paying Choice prices for Good beef, the Secretary stated prior to promulgating the revisions:

It is true that some beef now eligible for Good will be graded Choice and the two comingled are expected to sell at the same price. However, the price is determined by supply and demand. To the extent that the volume of Choice beef is increased (which is expected), all Choice beef will sell at a lower price than would otherwise be the case.

(Defendants' Exhibit No. 508). This analysis was shared by the Center for the Study of Responsive Law in the

^{20/} The Consumer Group did not participate in the trial. However, the concerns expressed in their complaint were virtually the same ones raised before the Secretary. (See Consumer Group Complaint) (Filing No. 50).

article "U.S. Fat, Fatter, Fattest":

Thus the industry assures itself that more of its beef will be graded in the upper and more high priced grades. In the end, the industry would be cutting production costs across the board: there would be cost cuts in human labor per head, feed per head, and a faster turn over in the feedlots because internal fat requirements would be cut or kept down for older animals.

The consumer is also in a position to benefit, not only in reduced meat prices if the savings of the industry were passed on to the ultimate buyer. But more importantly the consumer would be buying less fatty meat and more protein per pound of lean.

(Defendants' Exhibit No. 671, at 4). At the district court trial the only expert agricultural economist presented by appellees, Professor William F. Lomasney, was unable to say what price effect the revisions would have upon consumers. (Tr. 790). The Government, on the other hand, produced two agricultural economists who supported the Secretary's analysis and predicted that consumer prices for Prime and Choice beef actually would drop as a result of the revisions. (Tr. 1414, 1574).

Thus a thorough, probing review of the administrative record, and the trial record as well, reveals that the Secretary considered all the "relevant factors" and made no "clear error of judgment" in revising the marbling-maturity requirements. Accordingly, it cannot be said that the promulgation of these revisions was arbitrary, capricious, or an abuse of discretion.

B. Yield Grading Revisions.

As the Secretary explained in the "Statement of Considerations", the proper functioning of the meat industry depends in large part upon how well the federal grades serve as "a tool for reflecting consumer preferences back through marketing channels to producers". (Add. 15a). It had been recognized for quite a while that the most important factor affecting the value of a beef carcass, apart from palatability, was "cutability", or yield. (Id.). To some extent it was possible to estimate cutability from the conformation evaluation which entered into the quality grade. (Add. 14a-15a). However, the Secretary determined on the basis of research studies that cutability was more accurately measured by the yield grade (Add. 15a), and with the proposed elimination of the conformation evaluation, he perceived an opportunity to have graded beef accurately identified for value by requiring that it be graded for yield as well as quality. (Id.). The Secretary maintained that

if the market for beef and cattle reflected the full retail sales value differences associated with differences in both quality and cutability, producers would respond by increasing the production of high-quality, high-cutability beef. This would be advantageous to all segments of the industry and to consumers by providing leaner beef with less waste in keeping with consumer tastes.

(Id.).

The administrative record contains numerous research studies supporting the Secretary's finding that the yield

grade measures differences in cutability with a higher degree of accuracy than any other practical and available system. (Defendants' Exhibits Nos. 670, 607, 666, 672, 662). While at the trial one of appellees' expert witnesses implied that there were inaccuracies in yield grading (Tr. 501), inaccuracies which the Secretary himself noted in the "Statement of Considerations" (Add. 17a), none of the witnesses challenged the proposition that the yield grade measures cutability more accurately than any other practical and available system. The Government's expert witness testified to the accuracy of the yield grade. (Tr. 1362). The administrative record also contains the very same complaints of the meat packers against the yield grading revisions which were repeated by the Packers at the trial. (Compare Add. 16a with Tr. 243-248, 378, 380-382, 390-391, 395, 436-437, 501, 548-549, 849, 847-860, 901).

In the "Statement of Considerations" the Secretary listed the packer objections and responded to each of them. (Add. 16a-17a). He rejected the contention that the revision would materially increase the cost of grading. He pointed out that "grading costs normally represent only a very small fraction of a cent per pound of beef graded", and "[i]t is likely that the time saved in quality grading by eliminating conformation as a factor in determining the quality grade and by eliminating consideration of changes in maturity for much of the beef graded, would offset any

additional time ^{21/} required to identify all graded carcasses for both quality grade and yield grade"; further, "[a]t the present time, 70 percent as much beef is yield graded as is quality graded". (Id.).

The Secretary acknowledged that the yield grading revisions might hamper the packers' ability to sell low-yielding, non-yield graded carcasses from which external fat may have been trimmed -- a suspicious trade practice at best (see Tr. 390, 858-859, 881-884) -- but concluded that the benefits to be derived from the revisions outweighed this fact. (Id.). He also noted that the number of trimmed carcasses and special cuts that could not be officially graded under the revisions was relatively insignificant. (Add. 16a-17a). Finally, he reiterated his confidence in the accuracy of the yield based on the research in the administrative record. (Add. 17a). See supra, p. 37-38. At the trial the pertinent testimony of the Government's witnesses supported the Secretary's findings and conclusions. (Tr. 1362, 1416-1419, 1423-1424, 1699, 1793-1794, 1801).

Since the Secretary considered all the "relevant factors" and made no "clear error of judgment" in revising the yield grading regulations, the promulgation of those revisions was not arbitrary, capricious, or an abuse of discretion. The district court concluded, however, that these revisions were promulgated in excess of statutory authority. This conclusion is plainly wrong.

^{21/} Some of the additional time will result from the increase in the number of stamps graders will apply to the carcasses under the revisions. See Memorandum, pp. 8-9.

In the first place, 7 U.S.C. 1622(h) provides that the federal meat grading program shall be operated "under such rules and regulations as the Secretary of Agriculture may prescribe". Under this broad enabling legislation the Secretary has wide discretion to promote such regulations as will promote the efficient and economical production, marketing, and consumption of domestic beef. Such regulations must stand so long as they are "reasonably related to the purposes of the enabling legislation". Mourning v. Family Publications Service, Inc., *supra*, at 369. Since, as we have just shown, the yield grading revisions were reasonably related to the purposes of 7 U.S.C. 1622(c), (h), their validity must be sustained.

In the second place, the district court's novel theory that the revisions make yield grading compulsory, in violation of the provision in 7 U.S.C. 1622(h) that "no person shall be required to use the service authorized by this subsection" (Memorandum, p. 13), is utterly fallacious. Neither 7 U.S.C. 1622(h) nor any of the regulations in 7 C.F.R. Part 53 prohibit the Secretary from identifying more than one characteristic -- e.g., both palatability and yield -- as part of the optional grading "service" he offers. Indeed, the quality grade alone is based on an evaluation of two separate factors: marbling and maturity. Under the district court's reasoning a packer would be able to insist that in grading for quality the Secretary limit his evaluation to one of these factors on the ground

that he cannot "compel" a packer to have his beef graded for both of them. In fact, the district court's theory would permit packers and others to dictate to the Secretary how federal grading should be performed.

Under the revised regulations meat packers retain the option of not having their beef yield graded because they retain the option of not submitting their beef for federal grading. If they voluntarily choose to purchase federal grading, however, they will get the type of grading the Secretary provides, which under the revisions means both quality and yield grading. This is exactly the way the Secretary grades at least 21 other types of agricultural products. See 7 C.F.R. Parts 51, 56 (1975). It happens also to be the way the Secretary has always graded beef for quality -- the only change is that instead of measuring yield by the conformation evaluation the Secretary will measure it by the more accurate yield grade.

The district court's finding that the yield grade revisions should be set aside because there is "no necessity" for them (Memorandum, p. 13) may be dismissed out of hand. It amounts to a direct violation of the prohibition against substituting judicial judgment for that of the agency. Citizens to Preserve Overton Park v. Volpe, *supra*, at 416.

C. The Other Revisions.

The elimination of conformation as a factor in determining the quality grade was opposed at the administrative level only by meat purveyors (Add. 17a), whose representative

repeated the opposition at trial. (Tr. 466-472). However, the opposition was simply that the elimination of conformation would permit carcasses with inferior conformation to qualify for high quality grades based solely on their palatability. (Add. 17a; Tr. 466-472). As the Secretary pointed out in the "Statement of Considerations" this was precisely the point of the revision. (Add. 17a). There is no information which shows that variations in conformation are related to palatability, and since the primary purpose of the quality grade is to measure palatability, there was no reason to skew it by basing it in part upon conformation. (Add. 14a). On the contrary, since the Secretary is bound to create greater "uniformity" in the federal grades, 7 U.S.C. 1622(c), it was sensible for him to eliminate a factor which distorted the quality grade and impaired its usefulness. At trial the elimination of conformation was supported even by witnesses for some of the appellees. (Tr. 715, 900).

The changes in the Good and Standard grade specifications were not materially challenged at the administrative level or in the district court by appellees, except to the limited extent they related directly to the two principal revisions. As the Secretary noted in the "Statement of Considerations" (Add. 17a), these changes would assist consumers in purchasing lean beef with an acceptable degree of palatability. The changes were generally supported at the trial. (Tr. 1345, 1492, 1646, 1711-1713).

Accordingly, the promulgation of the other revisions in the meat grading regulations was not arbitrary, capricious, or an abuse of discretion.

III

THE DISTRICT COURT IMPROPERLY ENJOINED IMPLEMENTATION OF THE REVISED MEAT GRADING REGULATIONS ON THE GROUND THAT THE SECRETARY FAILED TO COMPLY WITH EXECUTIVE ORDER NO. 11821.

The district court struck the revised meat grading regulations in their entirety on the ground that the Secretary failed to comply with Executive Order No. 11821 (Memorandum, pp. 15-16).

Executive Order No. 11821 was issued by President Ford on November 27, 1974. (Add. 7a-8a). Section 1 of the order requires agencies proposing the promulgation of "major" rules or regulations to make an "evaluation" of the "inflationary impact" of the proposals "in accordance with criteria and procedures established pursuant to this order". (Add. 7a). It also requires agencies to accompany any such rule or regulation with a "statement which certifies that the inflationary impact of the proposal has been evaluated". (Id.). Section 2(a) delegates to the Director of the Office of Management and Budget the power "to develop criteria for the identification of major legislative proposals, regulations, and rules" and to "prescribe procedures for their evaluation". (Id.).

Pursuant to Section 2(a) of the executive order the Director of the Office of Management and Budget issued Circular No. A-107 on January 28, 1975. (Add. 9a-13a). Section 4(b) of the Circular calls upon all federal agencies to "develop procedures for the evaluation" of significant proposals. (Add. 11a). It states that "[t]he evaluation should include, where applicable" the following: "(1) an analysis of the principal cost or other inflationary effects of the action on markets, consumers, businesses, etc., and, where practical, an analysis of secondary cost and price effects; * * * (2) a comparison of the benefits to be derived from the proposed action with the estimated costs and inflationary impacts; * * * (3) a review of alternatives to the proposed action that were considered * * *." (Id.). Section 5(d) of the Circular directs agencies to submit to the Council on Wage and Price Stability a copy of the proposals evaluated for inflationary impact, the accompanying certification of evaluation required by the executive order, and a "brief summary" of the evaluation. (Add. 12a). The Circular also advises in Section 6(a) that agencies should be prepared to submit additional information concerning inflationary impact evaluations to the Council upon request. (Add. 13a).

In accordance with Executive Order No. 11821 the Secretary evaluated the inflationary impact of the revised meat grading regulations, and pursuant to Section 1 of the executive order he published along with the revisions a statement so certifying. (Add. 25a). In accordance with

Section 5(d) of Circular No. A-107 the Secretary prepared for the Council on Wage and Price Stability a "brief summary" of the inflationary impact evaluation. (Defendants' Exhibit No. 901).

In this brief summary the Secretary noted that the revisions "will reduce feed grain and protein requirements, thereby reducing the cost of producing beef. Lower costs should result in production responses that would lead to lower consumer prices". (Id. at 2). He also pointed out that "[i]mproved pricing accuracy provided by the requirement that all cattle quality graded also be yield graded may be the most significant anti-inflationary aspect of the proposal". (Id.). The Secretary acknowledged that the change in the Good quality grade might have a "slight inflationary effect", but he emphasized that "it was considered necessary to develop a more workable grade that could become an important segment of graded beef in meeting the future needs of retailers and consumers". (Id.). The brief summary also referred to the studies made by the Department of Agriculture in conjunction with the promulgation of the revisions which supported their economic viability and analyzed their impact on all segments of the industry and on consumers. (Id. at 2-3). See Defendants' Exhibits Nos. 513, 514.

The district court purported to find that the Secretary's inflationary impact evaluation was deficient because he "did not consider" the effect of the revisions upon:

- (a) The productivity of wage earners
- (b) Competition
- (c) Employment
- (d) Energy resources
- (e) Secondary markets (e.g., grain).

(Memorandum, p. 15).

It further purported to find that the Secretary "did not weigh the inflationary impact of the alternative proposals submitted by consumers and others" and failed to quantify the factors he did consider. (*Id.*). Because it deemed itself empowered by 7 U.S.C. 1621 to enforce the terms of Executive Order No. 11821 (*id.*, pp. 14-15), the district court enjoined implementation of the revisions on the basis of these "findings" of insufficient compliance. (*Id.*, pp. 15-16).

We contend that enforcement of Executive Order 11821 should be left to the President of the United States, and is not an appropriate matter for the courts. Alternatively, we contend that the Secretary did not fail to comply with the executive order.

1. The leading case dealing with judicial enforcement of executive orders issued without specific congressional authorization, such as Executive Order No. 11821, is Manhattan-Bronx Postal Union v. Gronouski, 350 F.2d 451 (C.A.D.C., 1965). That case involved an executive order issued by President Kennedy in 1962 which grew out of a presidential task force report on employee-management relations in the federal service. The order directed the heads of federal agencies to promulgate rules guaranteeing

levels of recognition status to employee organizations. The order provided that an organization would be designated as the exclusive representative of a particular employee unit if so elected by a "majority" of the employees of that unit. "Majority" was defined by an advisory committee established by the order to assist in its implementation to mean a majority of the employees voting in an election in which at least 60% of those eligible to vote actually cast ballots, unless special circumstances justified a percentage slightly less than 60%. In an election in New York City in which 57% of the eligible employees voted, Manhattan-Bronx Postal Union was elected to be the exclusive representative of a unit of postal employees in New York City, but the Postmaster General refused to recognize it on the grounds that less than 60% of the eligible employees voted and that there were no special circumstances justifying reliance on only 57%. The union then sued to enjoin the refusal of the Postmaster General to recognize it, claiming that the refusal was an unlawful act in violation of Executive Order No. 10988.

The court of appeals affirmed the dismissal of the complaint on the ground, inter alia, that "the right [the union] seek[s] to assert in this instance is not, in our view, appropriate for judicial vindication". The court examined the issuance of the order in the following terms:



Executive Order 10988 represents in essence a formulation of broad policy by the President for the guidance of federal employing agencies. It had no specific foundation in Congressional action, nor was it required to effectuate any statute. It could have been withdrawn at any time for any reason. It represented simply one President's effort to move in the direction of what he had been advised by his experts would be an improvement in the efficiency of federal employment. As we have indicated, he imposed no hard and fast directives on the many different kinds of federal employees; and he left large areas for the exercise of discretion at levels below the summit, although he went to some pains to provide continuing advisory services from those people and agencies within his Administration equipped with special knowledge or experience in personnel matters.

The President did not undertake to create any role for the judiciary in the implementation of this policy. The question of his power to do so aside, he was, at least in this matter of determining representational rights, emulating the example of Congress, which has shown a marked disinclination to intrude equity courts into this process.

350 F.2d at 456.

The court held that even if the Postmaster General violated Executive Order No. 10988 "it does not follow that appellants have a right of such nature as to warrant intervention by an equity court." 350 F.2d at 457.

If appellants disagreed with the Postmaster General's decision as to this aspect of personnel policy, and believed it to be contrary to the President's wishes, it is obvious to whom their complaint should have been directed. It was not to the judicial branch. Congress has given the District Court many important functions to perform, but they do not include policing

the faithful execution of Presidential policies by Presidential appointees.

Id.

Executive Order No. 11821, like the order in Manhattan-Bronx Postal Union, "represents in essence a formulation of broad policy by the President" -- in this case a policy of curbing inflation. It has "no specific foundation in Congressional action" and it is not "required to effectuate any statute". It may be "withdrawn at any time for any reason". The President "did not undertake to create any role for the judiciary" in its implementation. The order is, essentially, an internal management and information-gathering tool of the Executive Branch, compliance with which should be monitored by the Chief Executive and not the courts.

The district court purported to find statutory authority to enforce Executive Order No. 11821 under 7 U.S.C. 1621. (Memorandum, pp. 14-15). That statute expresses the intent of Congress to have an economically viable domestic agriculture industry, and the district court read it as requiring the Secretary to make the economic analysis discussed in Executive Order No. 11821. But in declaring the purpose of the Agricultural Marketing Act of 1946 at 7 U.S.C. 1621 Congress could not possibly have intended to obligate the Secretary to comply with some future executive order having no special connection with the Act. Insofar as pertinent, 7 U.S.C. 1621 contains no mandate

to the Secretary at all; rather, it is simply a broad general statement of congressional intent. We see no logic in the district court's conclusion that compliance with Executive Order No. 11821 is reviewable because of 7 U.S.C. 1621.

2. Even if the district court were empowered to enforce Executive Order No. 11821 it is clear that the Secretary did not fail to comply with its terms. First, it is obvious that the Secretary determined that the revision of the meat grading regulations constituted a "major" proposal within the meaning of Executive Order No. 11821 since, as the district court acknowledged, the Secretary conducted an evaluation of the revisions and published the appropriate statement so certifying. (Memorandum, p. 7). That being the case, the district court's "finding" that the Secretary failed to consider the effect of the revisions upon "[t]he productivity of wage earners", "[c]ompetition," "[e]mployment," "[e]nergy resources," and "[s]econdary markets (e.g. grain)" (Memorandum, p. 15), is meaningless, since under Section 4(a) of the Circular a consideration of those factors is necessary only for the initial determination as to whether a proposal is "major". (Add. 10a-11a).

That leaves only the "findings" that the Secretary did not evaluate the inflationary impact of alternative proposals to the revisions and did not quantify the factors he did consider. (Memorandum, p. 15). But these "findings"

are based only on what it appears in the brief summary prepared by the Secretary for the Council on Wage and Price Stability. The Secretary is entitled to the presumption that the actual evaluation was complete and in accordance with Section 4(b) of Circular No. A-107. See Citizens to Preserve Overton Park v. Volpe, supra, at 415. There is no evidence that either the Council on Wage and Price Stability or the Office of Management and Budget found the Secretary's evaluation deficient, or that they requested additional information from him before he promulgated the revisions. Furthermore, it must be noted that Section 4(b) of the Circular suggests an evaluation of certain listed factors only "where applicable". (Add. 11a). The Secretary obviously was not required to include in the brief summary a review of those factors listed in Section 4(b) which were not applicable to the proposal he was making.

In short, the Secretary complied with Executive Order No. 11821, and the district court improperly enjoined the implementation of the revisions to the meat grading regulations.

CONCLUSION

For the foregoing reasons we ask the Court to vacate the injunction and reverse the judgment entered below.

Respectfully submitted,

REX E. LEE,
Assistant Attorney General,

DANIEL E. WHERRY,
United States Attorney,

ROBERT E. KOPP,
NEIL H. KOSLOWE,
Attorney,
Appellate Section,
Civil Division,
Department of Justice,
Washington, D. C. 20530.

AUGUST 1975.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 1975, I caused the foregoing brief to be served upon opposing counsel by mailing, air mail, postage prepaid, a copy to:

Ben E. Kaslow, Esquire
Frank F. Pospishil, Esquire
Abrahams, Kaslow & Cassman
1175 Woodmen Tower
Omaha, Nebraska 68102

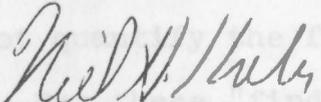
D.C. Bradford III, Esquire
Charles L. Titus, Esquire
Bradford & Bloch
300 South 19th Street
Omaha, Nebraska 68102

Richard J. Wegener, Esquire
Robert H. Berkshire, Esquire
Swarr, May, Smith & Anderson
3535 Harney Street
Omaha, Nebraska 68131

Girardeau A. Spann, Esquire
Suite 700
2000 P Street, N. W.
Washington, D. C. 20036

James Gleason, Esquire
Collins & Gleason
7905 L Street
Omaha, Nebraska 68127

J. Evan Goulding, Esquire
1001 Lincoln Street
Denver, Colorado 80203


NEIL H. KOSLOWE
Attorney.

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I N D E X

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Administrative Procedure Act, 5 U.S.C. 551 et seq. (1970):	
5 U.S.C. 553 -----	1a
5 U.S.C. 706 -----	2a
Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 et seq. (1970):	
7 U.S.C. 1621 -----	3a
7 U.S.C. 1622 -----	4a
Executive Order No. 11821, 39 Fed. Reg. 41501 (1974) -----	7a
Circular No. A-107 of the Office of Management and Budget -----	9a
40 Fed. Reg. 11535 (1975) (Defendants' Exhibit No. 504) -----	14a

551. Rule making.

(a) This section applies, according to the provisions thereof, except to the extent that there is otherwise provided by law, to the exercise of any authority of the United States, or

(b) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 554 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except--

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency -- i -- an interested person the right to petition for the issuance, amendment, or repeal of a rule. (Pub. L. 91-354, Sept. 8, 1969, 80 Stat. 382.)

§ 553. Rule making.

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms of substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the ruling making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

§ 1621. Congressional declaration of purpose; use of existing facilities; cooperation with States.

The Congress declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation. It is further declared to be the policy of Congress to promote through research, study, experimentation, and through cooperation among Federal and State agencies, farm organizations, and private industry a scientific approach to the problems of marketing, transportation, and distribution of agricultural products similar to the scientific methods which have been utilized so successfully during the past eighty-four years in connection with the production of agricultural products so that such products capable of being produced in abundance may be marketed in an orderly manner and efficiently distributed. In order to attain these objectives, it is the intent of Congress to provide for (1) continuous research to improve the marketing, handling, storage, processing, transportation, and distribution of agricultural products; (2) cooperation among Federal and State agencies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution processes; (3) an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner. In effectuating the purposes of this chapter, maximum use shall be made of existing research facilities owned or controlled by the Federal Government or by State agricultural experiment stations and of the facilities of the Federal and State extension services. To the maximum extent practicable marketing research work done under this chapter in cooperation with the States shall be done in cooperation with the State agricultural experiment stations; marketing educational and demonstrational work done under this chapter in cooperation with the States shall be done in cooperation with the State agricultural extension service; market information, inspection, regulatory work and other marketing service done under this chapter in cooperation with the State agencies shall be done in cooperation with the State departments of agriculture, and State bureaus and departments of markets. (Aug. 14, 1946, ch. 966, title II, § 202, 60 Stat. 1087.)

§ 706. Scope of review.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

§ 1622. Duties of Secretary relating to agricultural products.

The Secretary of Agriculture is directed and authorized:

(a) Determination of methods of processing, packaging, marketing, etc.; publication of results.

To conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products: *Provided*, That the results of such research shall be made available to the public for the purpose of expanding the use of American agricultural products in such manner as the Secretary of Agriculture may determine.

(b) Determination of costs.

To determine costs of marketing agricultural products in their various forms and through the various channels and to foster and assist in the development and establishment of more efficient marketing methods (including analyses of methods and proposed methods), practices, and facilities, for the purpose of bringing about more efficient and orderly marketing, and reducing the price spread between the producer and the consumer.

(c) Improvement of standards of quality, condition, etc.

To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.

(d) Elimination of artificial barriers to free movement.

To conduct, assist, foster, and direct studies and informational programs designed to eliminate artificial barriers to the free movement of agricultural products.

(e) Development of new markets.

To foster and assist in the development of new or expanded markets (domestic and foreign) and new and expanded uses and in the moving of larger quantities of agricultural products through the private marketing system to consumers in the United States and abroad.

(f) Increasing consumer education.

To conduct and cooperate in consumer education for the more effective utilization and greater consumption of agricultural products: *Provided*, That no money appropriated under the authority of this chapter shall be used to pay for newspaper or periodical advertising space or radio time in carrying out the purposes of this section and subsection (e) of this section.

(g) Collection and dissemination of marketing information.

To collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

(h) Inspection and certification of products in interstate commerce; certificates as evidence; penalties.

To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection. Any official certificate issued under the authority of this subsection shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained. Whoever knowingly shall falsely make, issue, alter, forge, or counterfeit any official certificate, memorandum, mark, or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized under this section or knowingly cause or procure, or aid, assist in, or be a party to, such false making, issuing, altering, forging, or counterfeiting, or whoever knowingly shall possess, without promptly notifying the Secretary of Agriculture or his representative, utter, publish, or use as true, or cause to be uttered, published, or used as true, any such falsely made, altered, forged, or counterfeited official certificate, memorandum, mark, identification, or device, or whoever knowingly represents that an agricultural product has been officially inspected or graded (by an authorized inspector or grader) under the authority of this section when such commodity has in fact not been so graded or inspected shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(i) Development of facilities for assembling, processing, transporting, etc.

To determine the needs and develop or assist in the development of plans for efficient facilities and methods of operating such facilities for the proper assembly, processing, transportation, storage, distribution, and handling of agricultural products.

(j) Improvement of transportation facilities and rates.

To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers.



EXECUTIVE ORDER 11821

Inflation Impact Statements

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

SECTION 1. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. Such evaluation must be in accordance with criteria and procedures established pursuant to this order.

SEC. 2(a) The Director of the Office of Management and Budget is designated and empowered, to the extent permitted by law, to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant impact upon inflation, and to prescribe procedures for their evaluation.

(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.

SEC. 3. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant impact:

- a. cost impact on consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
- c. effect on competition;
- d. effect on supplies of important products or services.

SEC. 4. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order,

(k) Collection and dissemination of marketing statistics.

To collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

(l) Development of procurement standards and specifications.

To develop and promulgate, for the use and at the request of any Federal agency or State, procurement standards and specifications for agricultural products, and submit such standards and specifications to such agency or State for use or adoption for procurement purposes.

(m) Promotion of research for handling, storing, preserving, etc.

To conduct, assist, encourage, and promote research, investigation, and experimentation to determine the most efficient and practical means, methods, and processes for the handling, storing, preserving, protecting, processing, and distributing of agricultural commodities to the end that such commodities may be marketed in an orderly manner and to the best interest of the producers thereof.

(n) General research, services, and activities.

To conduct such other research and services and to perform such other activities as will facilitate the marketing, distribution, processing, and utilization of agricultural products through commercial channels. (Aug. 14, 1946, ch. 966, title II, § 203, 60 Stat. 1087; Aug. 9, 1955, ch. 632, § 1, 69 Stat. 553.)

Excluded 3

THE PRESIDENT

furnish him with such information as he may request, and comply with the procedures prescribed pursuant to this order.

SEC. 5. This order expires December 31, 1976, unless extended prior to that time.

Gerald R. Ford

THE WHITE HOUSE,

November 27, 1974.

[FR Doc.74-28157 Filed 11-27-74;12:09 pm]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 28, 1975

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Inflation Impact Statements

I am forwarding for your guidance, OMB Circular No. A-107, which requires the evaluation of the economic impact of proposed major Executive branch initiatives. This Circular was authorized by Executive Order No. 11821, signed November 27, 1974, by President Ford. The President first announced his intention in this regard in his October 8, 1974, Message to the Joint Session of Congress. This Circular reflects the comments of various Departments and Agencies on a prior draft. The President's intention is to make Government decisionmakers more sensitive to the hidden and often excessively costly consequences of prospective Government actions. Because this is an important part of the President's economic program, it is incumbent on all of us to focus our best analytical efforts on the full economic consequences of Government's actions.

The Council on Wage and Price Stability will play a major role in this effort. The Council will be receiving summaries from you of your evaluation of proposed major rules and regulations, and may be requesting other information from you in connection with the evaluations. Also, the Council on Wage and Price Stability will assist OMB and Executive Departments and Agencies in identifying criteria to comply with the Executive Order.

Several commenting agencies pointed out the need for greater specificity in the criteria and procedures prescribed pursuant to the Order. While we do not believe it is appropriate or practical in this instance to spell out in great detail criteria applicable Government-wide in a circular, we do believe it is particularly important that agencies achieve this specificity for their internal approaches to implement the Executive Order. We will be working with you and will provide you any assistance you may require.

Thank you for your cooperation in this important effort.

Roy L. Ash

Roy L. Ash
Director

Enclosure

Exhibit 4



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

January 28, 1975

CIRCULAR NO. A-107

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Evaluation of the Inflationary Impact of Major Proposals for Legislation and for the Promulgation of Regulations or Rules

1. Purpose. This Circular prescribes guidelines for the identification and evaluation of major proposals for legislation and for the promulgation of regulations or rules.

2. Authority. Executive Order No. 11821 provided that major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The Director of the Office of Management and Budget (OMB) was designated to develop criteria and prescribe procedures for carrying out the Order.

3. Coverage. For purposes of this Circular major proposals for legislation and for the promulgation of regulations or rules for which evaluations will be required will be determined by criteria developed by each Executive branch agency and approved by the Director of OMB in accordance with this Circular. Agencies which do not propose legislation or promulgate rules or regulations may be exempted from the requirements of this Circular (pursuant to Section 4(e)).

4. Requirements.

a. Agency heads are responsible for the development of criteria to determine which proposed legislation, regulations, or rules originated by the agency are "major" and therefore require evaluation and certification. In developing criteria, each agency head shall consider, among other things,

- (1) cost impact on consumers, businesses, markets, or Federal, State, or local government;
- (2) effect on productivity of wage-earners, businesses, or government;
- (3) effect on competition;
- (4) effect on supplies of important materials, products or services;
- (5) effect on employment;
- (6) effect on energy supply or demand.

b. Each agency shall develop procedures for the evaluation of proposals identified by application of approved criteria. The evaluation should include, where applicable,

(1) an analysis of the principal cost or other inflationary effects of the action on markets, consumers, businesses, etc., and, where practical, an analysis of secondary cost and price effects. These analyses should have as much quantitative precision as necessary and should focus on a time period sufficient to determine economic and inflationary impacts.

(2) a comparison of the benefits to be derived from the proposed action with the estimated costs and inflationary impacts. These benefits should be quantified to the extent practical, and

(3) a review of alternatives to the proposed action that were considered, their probable costs, benefits, risks, and inflationary impacts compared with those of the proposed action.

c. Agencies should comply with the requirements of this Circular with existing resources and personnel.

d. Identification criteria established by each agency shall be submitted to the Office of Management and Budget within 30 days of the issuance of this Circular for review and approval by OMB in consultation with the Council on Wage and Price Stability. Each agency shall designate an official to be responsible for compliance with this Circular

(No. A-107)

(No. A-107)

and shall also notify OMB and the Council within the 30 days of that officer's name and title.

e. Agencies that do not propose major legislation, rules, or regulations, may be exempted from the requirements of this Circular by the Director of the Office of Management and Budget, acting in consultation with the Council on Wage and Price Stability. Requests for exemption should be submitted to OMB within 30 days of issuance of this Circular.

5. Disclosure.

a. As provided in Executive Order No. 11821, major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The statement of certification should be repeated whenever the proposal is published or issued. Upon request, agencies shall provide the Office of Management and Budget with the information necessary to ascertain that the approved criteria and procedures are adequately implemented.

b. When legislative proposals determined to warrant evaluation are forwarded to OMB for review and clearance pursuant to OMB Circular No. A-19 (Revised), agencies should furnish upon request appropriate data and analyses.

c. After a legislative proposal is forwarded to the Congress, economic data and analyses developed in evaluating the inflationary impact of the proposal along with other data and analyses concerning the overall impact of the proposal will, of course, be furnished to the Congress, as part of the overall justification of the proposal.

d. With respect to major proposals for rules or regulations, the proposing agency shall also, at the time it first certifies it has evaluated the inflationary impact of the proposal, submit to the Council on Wage and Price Stability a copy of the proposed rule or regulation, the accompanying certification, and a brief summary of the agency's evaluation pursuant to Section 4(b) above.

(No. A-107)

(107-A)

(No. A-107)

6. Responsibilities.

a. Council on Wage and Price Stability. Each Executive branch agency should be prepared to respond to requests for information from the Council on Wage and Price Stability, or from other authorized agencies, concerning the identification or evaluation of a major proposal for legislation, rule, or regulation or of a particular class of proposals.

b. The Office of Management and Budget. The Office of Management and Budget will cooperate with the agencies in developing criteria and evaluation procedures in compliance with this Circular.

c. Interim Provisions. In the interim prior to final approval of criteria, agency heads are responsible for identifying which proposed legislation, regulations, or rules originating from their agency require evaluation and certification. In making such determinations, agency heads shall consider the categories of impact in Section 4(a) of this Circular. For assistance, agencies may consult the following: for legislative proposals, the Assistant Director for Legislative Reference (OMB), telephone 395-4864; or for proposed regulations or rules, the Assistant Director for Government Operations and Research (Council on Wage and Price Stability), telephone 456-6493.

7. Inquiries. Inquiries and requests for other assistance should be directed to the Associate Director for Economics and Government (OMB), telephone 395-4844 (code 103).

ROY L. ASH
DIRECTOR

(No. A-107)



UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

(Reprinted from the FEDERAL REGISTER of March 12, 1975 (40 FR 11535))

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTION, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 53—LIVESTOCK, MEATS, PREPARED MEATS AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

Subpart B—Standards

GRADES OF CARCASS BEEF; SLAUGHTER CATTLE

This document revises the official standards of the United States for grades of carcass beef and the related standards for grades of slaughter cattle which are based on the carcass grade standards. The revisions are substantially the same as those proposed by the Department in the September 11, 1974, issue of the FEDERAL REGISTER. The principal changes in the carcass beef standards are: (1) Conformation is eliminated as a factor in determining the quality grade. (2) When officially graded, all beef (except bull beef) will be identified for both quality grade and yield grade. (3) For beef from cattle under about 30 months of age (A maturity), the minimum marbling requirements in the Prime, Choice, and Standard grades will be the same as now required for the youngest carcasses in each of these grades. However, for more mature carcasses in each of these grades (B maturity), increases in marbling are required for increases in maturity but the minimum levels of marbling are decreased one degree. (4) In the Good grade, the same principles apply to the marbling requirements as described for Prime, Choice, and Standard. However, the minimum marbling requirements are increased one-half degree for the very youngest carcasses classified as beef. (5) The maximum maturity permitted in the Good and Standard grades is reduced and is the same as that permitted in Prime and Choice.

A few other minor changes also are made in the standards to improve clarity and facilitate uniform interpretation.

The standards for grades of slaughter cattle also are revised to coordinate them with the changes in standards for grades of carcass beef.

A change from the proposed standards was made to clarify the fact that under some circumstances retention of the yield grade stamp would not be required on some graded cuts of beef. Such a clarification has been included in § 53.102(a) of the standards.

On September 11, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 32743) re-

garding a revision of the standards for grades of carcass beef (7 CFR 53.100 et. seq.), and the standards for grades of slaughter cattle (7 CFR 53.201 et. seq.) pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, 60 Stats. 1087 and 1090, as amended (7 U.S.C. 1622 and 1624).

A 90-day period was provided within which interested persons could submit written data, views, or arguments concerning the proposal. In addition, regional briefings on the proposal were held in Washington, New York, Chicago, Dallas, Atlanta, and San Francisco. These briefings, were designed to give consumers, media representatives, members of the trade, and others information about the changes proposed and the reasons for proposing them. Members of the Department also appeared at several industry meetings to explain the proposal.

The comments and other information available to the Department relative to the proposal have been carefully summarized and evaluated. Based on that evaluation, the Department has concluded that, with one addition, adoption of the standards as proposed is in the public interest.

Statement of Considerations. Under the Agricultural Marketing Act of 1946, as amended, the Department of Agriculture is responsible for providing meaningful and useful grade standards to facilitate the marketing of livestock and meat. The Act directs the Secretary of Agriculture to develop and improve standards for quality, condition, quantity, and grade, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practice, 7 U.S.C. 1622(c). The Act also directs the Secretary to inspect, certify, and identify the class, quality, and condition of agricultural products so that they may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product they desire, but no person is required to use the service, 7 U.S.C. 1622(h).

In the grade standards for beef as originally promulgated in 1926, separate standards were provided for beef from steers, heifers, and cows. In these standards, marbling was recognized as a major factor in evaluating quality of the lean. The first major revision of these grades in 1939 combined the standards for steer, heifer, and cow beef and also established maturity as an important additional factor in evaluating quality. These two considerations—marbling and maturity—have been continued as the principal factors referenced in the standards to evaluate dif-

ferences in lean quality and reflect the premises (1) that increases in marbling have a beneficial effect on palatability and (2) that advancing maturity has a deleterious effect on palatability. Since these factors have opposite effects on quality, in the specifications for each of the grades, increased marbling has been required as maturity increases. And, in the revision of the standards in 1965, these relationships were shown in graphic form. Eight grades are currently used to identify these quality differences—Prime, Choice, Good, Standard, Commercial, Utility, Cutter, and Canner.

In 1965, after more than ten years of extensive studies, a new dimension was added to beef grading—yield grades. Five numerical grades, 1 through 5, identify carcasses and some wholesale cuts for their relative yields of retail cuts or "cutability". Quality and yield grades, which have been available for use separately or jointly, identify beef for the two most important factors that affect its acceptance and value, namely (1) eating quality—tenderness, juiciness, and flavor—and (2) yields of salable meat.

Prior to developing the proposed changes announced on September 11, 1974, the Department received specific recommendations for changes in the beef grade standards from groups representing several major segments of the cattle and beef industry. One of the recommendations—suggested by three of these groups—was that conformation be eliminated as a factor in determining the quality grade. The Department proposed this change in 1962 but it failed to receive sufficient support to justify its adoption at that time. However, as was the case in 1962, there is still no information which indicates that variations in conformation are related to differences in beef's palatability. Therefore, one of the important changes proposed was the elimination of conformation as a factor in determining the quality grade. Under the present standards, because of the manner in which variations in conformation affect the quality grade, beef included in most of these grades can be quite variable in quality. For example, the Good grade can include beef with Prime, Choice, Good, and Standard grade quality. Under the proposed standards, this variation would be eliminated—each quality grade would include only beef of that quality. This increased uniformity of quality within each grade would make the grades more useful and reliable guides to aid consumers in purchasing the kind of beef they prefer.

The Department acknowledges, however, that variations in conformation

which reflect differences in muscling do affect yields of lean—and carcass value. At the same time, though, the Department has determined that this contribution is more accurately measured and reflected by the yield grades than by subjective evaluations of conformation. Therefore, when carcasses are federally graded, to insure that the grade reflects the contribution of conformation and other factors affecting cut-out value, it was proposed that the official grade identify both the quality grade and the yield grade. This change in the standards was very strongly recommended by some producer organizations. The quality and yield grades identify the major factors that affect beef's value and acceptance but which are not otherwise readily identifiable by the marketing system. Therefore, these producer spokesmen pointed out that requiring officially graded carcasses to be identified for both quality and yield would increase the effectiveness of the grades as a tool for reflecting consumer preferences back through marketing channels to producers. The Department concurs with that view and also maintains that, if the market for beef and cattle reflected the full retail sales value differences associated with differences in both quality and cutability, producers would respond by increasing the production of high-quality, high-cutability beef. This would be advantageous to all segments of the industry and to consumers by providing leaner beef with less waste in keeping with consumer tastes. The significance of yield grades becomes evident when tests reveal that carcasses of the same quality grade—Choice for example—can vary in value by \$75 or more due to differences in cutability.

This proposed change also would affect the grading of some wholesale cuts—only loins, short loins, and ribs could be graded as individual cuts. These are the only cuts which contain a cross section of the ribeye muscle at the 12th rib—a requirement in determining the yield grade. However, rounds, chucks, and other wholesale cuts could be graded as cuts if they remain attached to a rib, short loin, or loin.

Each segment of the cattle and beef industry that suggested change in the standards recommended that the relative emphasis placed on marbling and maturity in determining the quality grade be changed. However, these recommendations were quite diverse. In recognition of the need for a more factual basis for the standards, the Department has continually encouraged and otherwise supported research designed to identify and evaluate the factors that affect beef palatability and a considerable amount of such research has been conducted. This research has confirmed that marbling and maturity are the two most important factors that can be used in grading to identify differences in palatability. However, most of the recent research indicates that as beef increases in maturity within the youngest maturity group referenced in the standards, an increase in

marbling is not necessary to insure a comparable degree of palatability. Therefore, for such young beef, another of the major changes proposed was the elimination of the requirements in the Prime, Choice, Good, and Standard grades for increased marbling with increased maturity within this maturity group. However, for the more mature beef in each of these grades, increased marbling requirements with increased maturity were retained but the marbling levels were reduced to coordinate them with the marbling requirements proposed for the younger beef. These proposed requirements—and changes from the present standards—are shown graphically in Figure A. For example, in the Choice grade, this Figure shows that for all beef in the youngest (A) maturity group, the proposal required the same minimum level of marbling—a minimum "small" amount. This also is the same amount of marbling now permitted in Choice for the youngest carcasses classified as beef. The same is true for the Prime and Standard grades. However, for the Good grade it was proposed to increase the minimum marbling requirement so that its "width"—with respect to marbling—was 1 degree of marbling instead of 1½ degrees as at present. It also should be noted that the maximum maturity for beef in the Good and Standard grades was decreased to coincide with that permitted for Prime and Choice. These proposed changes would make the "new" Good grade very uniform and restrictive and one that could become very useful to retailers and others whose trade prefers beef with less internal and external fat than currently associated with Choice grade beef. These changes should reduce the general fatness of beef in each of these grades and also make the palatability of beef in each grade more uniform—factors which are particularly important to consumer acceptability.

PROPOSED CHANGES IN THE RELATIONSHIP BETWEEN MARBLING, MATURITY, AND QUALITY GRADE

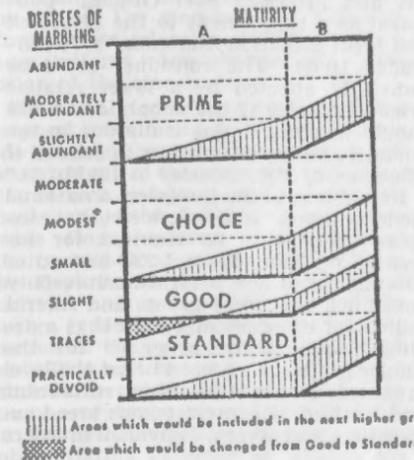


Figure A

The proposed reduction in the maximum maturity limits for Good and Standard would make a corresponding decrease in the minimum maturity limit for the youngest beef included in Commercial. This change would cause some carcasses now graded Good or Standard to be graded Commercial or Utility. However, the numbers of such carcasses would be minimal since relatively few animals are marketed which have carcasses in this very restricted range of maturity. Other than the elimination of conformation as a factor in determining the quality grade, no other changes were proposed for the Commercial, Utility, Cutter, and Canner grades. Also, no changes were proposed in the yield grades.

Most of the recent research applicable to the marbling-maturity relationship supports the concept that, for beef from cattle up to about 30 months of age, changes in maturity do not have a sufficiently significant effect on palatability to justify an increase in marbling—Berry et al. (J. Animal Science 38:507); Romans et al. (J. Animal Science 24:681); Breidenstein (J. Animal Science 27:1532); McBee and Wiles, (J. Animal Science 26:701); Covington et al. (J. Animal Science 30:191); and Norris et al. (J. Food Science 36:440). The Agricultural Marketing Service will continue to encourage and otherwise support further research to evaluate the effects of marbling and maturity on beef palatability and to determine if there are other factors that could be used in grading to better identify these differences.

The number of comments received on the proposal—4,549—was a record for a Department proposal to adopt new or revised standards for grades of livestock or meat. Comments were received from all segments of the livestock and meat industry—producers, feeders, packers, purveyors, retailers, hotels, restaurants, institutions, university personnel, and consumers. The 4,549 comments included 122 from organizations and 4,427 from individuals and companies. In addition, there were four petitions which contained a total of 7,618 signatures.

Reactions to various aspects of the proposal varied widely. For the most part, comments reiterated positions and recommendations which the Department had considered in developing the proposal. Many of those commenting on the proposal made reference to only part of the changes proposed. Even so, nearly half (43 percent) of all the comments received favored adoption of all the changes proposed. And, when separate tabulations were made of the comments on the three parts of the proposal on which the most comments were received, adoption of each was favored by a clear majority. These comments, by (1) organizations and (2) individuals and companies, are summarized in the following tabulation:

Change proposed	Comments for adoption		Comments against adoption	
	Number	Percent	Number	Percent
Marbling-maturity requirements:				
Organizations.....	50	67	39	33
Individuals and companies.....	2,387	54	2,043	46
Require both yield and quality grades on all graded carcasses:				
Organizations.....	60	71	33	29
Individuals and companies.....	2,325	63	498	18
More restrictive good grade:				
Organizations.....	73	74	25	26
Individuals and companies.....	2,033	60	495	20

Similar tabulations were not made for the other two parts of the proposal—to eliminate conformation as a factor in determining the quality grade and to make the maximum maturity for beef in the Good and Standard grades the same as for Prime and Choice. There was an obvious favorable consensus on these changes.

There were 2,610 comments received which were opposed to a part or all of the changes proposed or which suggested changes in the standards not included in the proposal. These objections and suggestions fell generally into the following categories:

- Marbling-maturity relationships.
- Requiring all graded beef to be identified for both quality grade and yield grade.
- Making the Good grade more restrictive.
- Eliminating conformation as a factor in determining the quality grade.
- Reducing the maximum maturity for beef in the Good and Standard grades to the same as now permitted for Prime and Choice.
- A suggested new grade "between Choice and Good."

The Department has considered each objection and suggestion carefully but, as hereinafter discussed, has concluded that they are not sufficiently substantiated to warrant revisions from the standards as proposed. However, some of the comments which related to the proposed requirement that all officially graded beef be identified for both quality grade and yield grade did raise considerations which warrant an addition in one section of the proposed standards and, for the reasons discussed hereinafter, such an addition has been made.

Marbling - maturity requirement changes were strongly supported by producers, meat packers, and university meat scientists. Opposition was voiced by most consumers, by some feeders and feeder organizations, and by practically all representatives of hotels, restaurants, institutions and their suppliers and trade associations. Opposition was based largely on (1) the fear of a significant reduction in the eating characteristics of Prime and Choice beef, and (2) the belief by consumers that they would have to pay "Choice grade prices for Good grade beef."

The changes in marbling-maturity relationships will not significantly change the eating characteristics of Prime and Choice grade beef. The changes are based on the latest available research relative to the effects of marbling and maturity on the palatability of beef. These studies indicate that in beef from cattle up to

about 30 months of age (A maturity), changes in maturity have no significant effect on beef palatability. As a result, the increases in marbling with increases in maturity provided in the present standards for such beef are not necessary to insure a comparable degree of palatability. Therefore, the changed marbling-maturity relationships should provide greater uniformity of eating quality within each of the grades and thereby enhance consumer satisfaction and confidence in grades.

The proposed changes should not result in consumers paying "Choice grade prices for Good grade beef." Many of the consumer comments expressed concern on this point. Three of the four consumer petitions, with 7321 signatures, related primarily to such price implications and one of these three, with 5670 signatures, inaccurately stated the changes involved.

The Federal grades are designed to identify the two most important value-determining characteristics of beef—its palatability and its yield of retail cuts. Consequently, there is a relationship between grades and prices. However, the price of any grade is determined by the normal market forces of supply and demand. The slight change in marbling requirements should decrease the costs of producing Choice and Prime grade beef and should encourage their increased production. And, since the quality of beef in each of these grades is not significantly changed, the demand for these grades should not be affected. Thus, an increased supply coupled with an unchanged demand should result in lower prices for Choice and Prime grade beef. A study by USDA's Economic Research Service, "A Comparison of Present and Proposed Beef Grades," published as a supplement to the Livestock and Meat Situation, December 1974 concluded that: "The consumer could be indirectly affected by a lower relative price of Choice if the supply of Choice should increase dramatically due to the change, and by lower prices in general if efficiency of the industry is improved."

In addition to the foregoing, a national feeders group recommended that increased marbling be required for increased maturity beyond 22—instead of 30—months of age. Also, some university personnel, one breed group, and several individual breeders suggested that marbling requirements, primarily for the Choice grade, be reduced below the level proposed. In contrast, some restaurant and institutional interests, one breed association, and several individual breeders

recommended increased marbling requirements. Research results do not substantiate these positions. The marbling-maturity relationships adopted are in accord with the research information currently available.

Requiring that all graded beef be identified for both its quality grade and yield grade was generally favored by producers, by hotels, restaurants, and institutional users of beef, and by meat scientists. It was strongly opposed by packers and others who indicated that it would (1) increase the cost of grading, (2) decrease packers' opportunity to "merchandise" lower yielding carcasses, (3) preclude the grading of carcasses that were trimmed to such an extent that the yield grade of a carcass is not an accurate reflection of its yield of retail cuts, (4) preclude the grading of rounds and chucks for which yield grade standards have not been developed, and (5) require the use of yield grades which are not sufficiently accurate indicators of cutability.

The requirement that all beef graded be graded for both quality and yield should not result in any material increase in the cost of grading. This conclusion is based on the following: (a) At the present time, 70 percent as much beef is yield graded as is quality graded, and (b) It is likely that the time saved in quality grading by eliminating conformation as a factor in determining the quality grade and by eliminating consideration of changes in maturity for much of the beef graded, would offset any additional time required to identify all graded carcasses for both quality grade and yield grade. In this connection, it should be noted that grading costs normally represent only a very small fraction of a cent per pound of beef graded.

Requiring that all beef graded be identified for both quality and yield grade may limit packers' ability to "merchandise" some kinds of carcasses. However, in conducting its meat grading program, the Department has a responsibility to assure that the grade identification provides as accurate an identification as possible of the important value-determining characteristics for which other measures are not readily available. It is only in this manner that Federal grades can be of maximum benefit in facilitating marketing and conveying consumers' preferences for the different kinds of beef back through marketing channels to producers. Such information is vital to producers since they make the decisions which result in the kinds of beef produced.

Objections also were made to precluding the grading of carcasses that have been trimmed of lean to an extent that the yield grade is not an accurate reflection of its yield of retail cuts. However, very few such carcasses are now offered for grading. Therefore, this limitation will not have a significant effect on the overall efficiency of the marketing of beef and is necessary to the proper functioning of the revised standards. Also, it should be noted that some parts of such

carcasses not affected by the trimming would be eligible for grading.

Similarly, objections were made to precluding the grading of rounds and chucks when offered for grading as wholesale cuts. However, at the present time, less than one percent of the federally graded beef is graded as quarters or wholesale cuts—including forequarters, hindquarters, loins, and ribs as well as rounds and chucks. Also, graded rounds and chucks still can be obtained from graded quarters or carcasses. It is obvious, therefore, that at this time, this limitation will not have a significant effect on the overall efficiency of the marketing of beef and is necessary to the proper functioning of the revised standards.

A number of research studies have shown that the current yield grade equation measures differences in cutability with a higher degree of accuracy than any other available system that would be practical for use in a grading program. Recent research studies conducted by the USDA Meat Animal Research Center also show that the present yield grades are highly correlated with yields of closely trimmed retail cuts. However, these latter studies do indicate that the presently used standards may tend to minimize the differences in cutability which actually exist among different kinds of carcasses. Based on these results, together with its policy of continually reviewing the adequacy of standards, the Department recently completed the data collection phase of an extensive beef cutability study. If the results of that study should indicate a need to revise the yield grade standards, such a revision will be proposed.

The more restrictive Good grade was supported by most producers, some cattle feeders, and many meat scientists. Principal opposition came from packers, primarily in the South and Southwest, where young, lightweight beef which qualifies for the Good grade is graded to a greater extent than in other areas. Some cattlemen and university personnel from the same areas also expressed opposition to this part of the proposal. Those objecting to this change contended that it would discriminate against much of this young, lightweight, Good grade beef—that its production would require cattle to be fed longer with increased fatness and cost of production.

Adoption of this part of the proposal may have some of the effects indicated—particularly in the South and Southwest. However, overall, only a small percentage of the beef that qualifies for Good is federally graded. This limited use likely is due to retailers' belief that the beef in the present Good grade is more variable than is acceptable to their customers. Some of the beef now eligible for the Good grade is produced from cattle fed and managed to produce Choice grade beef. At the other extreme, it also includes beef which actually has only Standard grade quality and qualifies for Good only because it has a relatively superior development of conformation.

The Department has a responsibility to modify the "width" of a grade when experience indicates such is needed to make it more acceptable and useful and it believes there is adequate justification for making the Good grade more restrictive than it is at present. This change will make Good grade beef very uniform and should encourage its greater acceptance and use by retailers and consumers. The revised Good grade could be especially useful if the trend continues, as some expect, of shorter feeding periods for cattle to reduce fatness and costs.

Eliminating conformation as a factor in determining the quality grade was strongly favored by producers, packers, and university personnel. Almost the only opposition to this change was from meat purveyors who gave as their reason that this change would dilute the various grades by permitting beef with a relatively inferior development of conformation to qualify for a higher quality grade under the proposal than is possible under the present standards. While this is the case, the amount of beef that qualifies for a grade is not the primary consideration in establishing standards. Of much more importance in developing the quality grade standards is assuring that the beef included in each grade has a similar development of the characteristics which identify differences in palatability. Since variations in conformation do not affect palatability, eliminating it as a factor in determining the quality grade will improve the accuracy of the grades for identifying beef for differences in eating quality and increase the uniformity of eating quality in each grade. A feeders' group suggested that a minimum conformation requirement be established for each quality grade. That suggestion was not considered advisable for much the same reasoning as discussed above. Some restaurants also opposed this proposed change but gave no reasons.

There were practically no comments which expressed opposition to the slightly more restrictive maturity limits for the Good and Standard grades. There are relatively few cattle marketed in this affected range of maturity. Therefore, this change will have very little effect on the use of the standards by industry. However, its adoption will facilitate a more uniform interpretation and application of the standards.

Some of the comments received on the proposal recommended the creation of a new grade of beef "between Choice and Good." Many of these did not make specific recommendations, but several comments suggested forming such a new grade from portions of the present Choice and Good grades. At this time, the Department does not believe that such an approach would be desirable. Such a grade could include a substantial portion of the present supply of Choice beef. This beef would be moved from a grade with nationwide trade and consumer acceptance into a new grade with an unknown potential. Thus, without substantiating evidence to support the

need to decrease the range of quality in the Choice grade, such a change would increase the requirements for Choice and thereby increase its cost of production. In the long run, such increased costs of production would be reflected in increased prices to consumers.

Accordingly, pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, the revisions in the standards for grades of slaughter cattle and the standards for grades of carcass beef are adopted as proposed (39 FR 32743-32752, FR Dec. 74-20718) subject to the following change:

An addition to paragraph (a) of § 53.102 was made to clarify the Department's intent that each of the quality and yield designations must remain on officially grade-identified carcasses, sides, quarters, and untrimmed wholesale cuts unless both such designations are removed. However, for (1) sub-primal and retail cuts and (2) wholesale cuts which have been substantially trimmed of external fat, it is the Department's intent to permit the yield grade designation to be removed. And, for labeling and other related purposes, the grade of such items may consist of the quality designation only. This change was made because the yield grade loses some of its significance as cuts are trimmed of external fat. In addition, this change will clarify the Department's intentions concerning the use of these grade designations.

Accordingly, the Official U.S. Standards for Grades of Carcass Beef and the Official U.S. Standards for Grades of Slaughter Cattle are revised by changing §§ 53.102, 53.104, 53.105, 53.203, 53.204, 53.205, and 53.206 to read as follows: § 53.102 Application of Standards for Grades of Carcass Beef.

(a) The grade of a steer, heifer, cow, or bullock carcass consists of separate evaluations of two general considerations: (1) The indicated percent of trimmed, boneless, major retail cuts to be derived from the carcass, herein referred to as the "yield grade," and (2) the palatability-indicating characteristics of the lean herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass consists of both the quality grade and the yield grade. Each of the quality and yield grade designations must remain on grade-identified carcasses, sides, quarters, and untrimmed wholesale cuts unless both such designations are removed. However, for sub-primal and retail cuts, and for wholesale cuts which have been substantially trimmed of external fat, the yield grade designation may be removed. For labeling and other related purposes, the grade of such items may consist of the quality designation only. The grade of a bull carcass consists of the yield grade only.

(b) The carcass beef grade standards are written so that the quality grade and yield grade standards are contained in separate sections. The quality grade section is divided further into two separate sections applicable to carcasses from (1)

steers, heifers, and cows, and (2) bullocks. Eight quality grade designations—Prime, Choice, Good, Standard, Commercial, Utility, Cutter, and Canner—are applicable to steer and heifer carcasses. Except for Prime, the same designations apply to cow carcasses. The quality grade designations for bullock carcasses are Prime, Choice, Good, Standard, and Utility. There are five yield grades applicable to all classes of beef, denoted by numbers 1 through 5, with Yield Grade 1 representing the highest degree of cutability.

(c) When officially graded, bullock and bull beef will be further identified for its sex condition; steer, heifer, and cow beef will not be so identified. The designated grades of bullock beef are not necessarily comparable in quality or cutability with a similarly designated grade of beef from steers, heifers, or cows. Neither is the cutability of a designated yield grade of bull beef necessarily comparable with a similarly designated yield grade of steer, heifer, cow, or bullock beef.

(d) The Department uses photographs and other objective aids in the correct interpretation and application of the standards.

(e) To determine the grade of a carcass, it must be split down the back into two sides and one or both sides must be partially separated into a hindquarter and forequarter by cutting it with a saw and knife insofar as practicable, as follows: A saw cut perpendicular to both the long axis and split surface of the vertebral column is made across the 12th thoracic vertebra at a point which leaves not more than one-half of this vertebra on the hindquarters. The knife cut across the ribeye muscle starts—or terminates—opposite the above-described saw cut. From that point it extends across the ribeye muscle perpendicular to the outside skin surface of the carcass at an angle toward the hindquarter which is slightly greater (more nearly horizontal) than the angle made by the 13th rib with the vertebral column of the hindquarter posterior to that point. As a result of this cut, the outer end of the cut surface of the ribeye muscle is closer to the 12th rib than is the end next to the chine bone. Beyond the ribeye, the knife cut shall continue between the 12th and 13th ribs to a point which will adequately expose the distribution of fat and lean in this area. The knife cut may be made prior to or following the saw cut but must be smooth and even, such as would result from a single stroke of a very sharp knife.

(f) Other methods of ribbing may prevent an accurate evaluation of the grade determining characteristics. Therefore, carcasses ribbed by other methods will be eligible for grading only if an accurate grade determination can be made by the official grader under the standards.

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which alter the characteristics of the ribeye or the thickness of fat over the ribeye may prevent an accurate grade

determination. Therefore, carcasses subjected to such influences may not be eligible for a grade determination. Also, carcasses with more than minor amounts of lean removed from the major sections of the round, loin, rib, or chuck will not be eligible for a grade determination.

(h) When both sides of a carcass have been ribbed prior to presentation for grading and the characteristics of the two ribeyes (area, marbling, color, texture, and firmness) would justify different quality and/or yield grades, the final grade of the carcass shall reflect the "highest" of each of these grades as determined from either side.

(i) The quality grade and yield grade descriptions are defined primarily in terms of beef carcasses. However, they also apply to the grading of hindquarters, forequarters, and certain individual primal cuts—loins, short loins, and ribs. A portion of these or other primal cuts as well as plates, flanks, shanks, and briskets likewise can be graded if attached by their natural attachments to a rib, loin, or short loin. Since bull carcasses are eligible for yield grade only, they may be graded only as carcasses, sides, or hindquarters. This is especially yield grades for forequarters and forequarter cuts and for trimmed hindquarters and trimmed hindquarter cuts include consideration of standard percentages of kidney, pelvic, and heart fat based on the quality grade. Other special major cuts or carcasses ribbed other than between the 12th and 13th ribs may be approved for grading by the Agricultural Marketing Service provided such deviations are necessary to meet either the demand of export trade or changing trade practices. In such cases, grading shall be based on the requirements specified in these standards and shall be consistent with the normal development of grade characteristics in various parts of a carcass of the quality level involved.

(j) Carcasses qualifying for any particular grade may vary with respect to their relative development of the various grade factors. There will be carcasses which qualify for a particular grade, some of whose characteristics may be more nearly typical of another grade. For example, in comparison with the descriptions of maturity contained in the standards, a particular carcass might have a greater relative degree of ossification of the cartilages on the ends of its lumbar vertebrae than its other evidences of maturity. In such instances, the maturity of the carcass is not determined solely by the ossification of the lumbar vertebrae but neither is this ignored. All of the maturity-indicating factors are considered. In making any composite evaluation of two or more factors, it must be remembered that they seldom are developed to the same degree. Because it is impractical to describe the nearly limitless number of recognizable combinations of characteristics, the standards for each quality grade and yield grade describe only beef which has a relatively similar degree of development of the various factors affecting its

quality and yield. Also, the quality grade and yield grade standards each describe beef which is representative of the lower limits of each quality grade and yield grade.

(k) For steer, heifer, and cow beef, quality of the lean is evaluated by considering its marbling and firmness as observed in a cut surface in relation to carcass evidences of maturity. The maturity of the carcass is determined by evaluating the size, shape, and ossification of the bones and cartilages—especially the split chine bones—and the color and texture of the lean flesh. In the split chine bones, ossification changes occur at an earlier stage of maturity in the posterior portion of the vertebral column (sacral vertebrae) and at progressively later stages of maturity in the lumbar and thoracic vertebrae. The ossification changes that occur in the cartilages on the ends of the split thoracic vertebrae are especially useful in evaluating maturity and these vertebrae are referred to frequently in the standards. Unless otherwise specified in the standards, whenever reference is made to the ossification of cartilages on the thoracic vertebrae, this shall be construed to refer to the cartilages attached to the thoracic vertebrae at the posterior end of the forequarter. The size and shape of the rib bones also are important considerations in evaluating differences in maturity. In the very youngest carcasses considered as "beef," the cartilages on the ends of the chine bones show no ossification, cartilage is evident on all of the vertebrae of the spinal column, and the sacral vertebrae show distinct separation. In addition, the split vertebrae usually are soft and porous and very red in color. In such carcasses, the rib bones have only a slight tendency toward flatness. In progressively more mature carcasses, ossification changes become evident first in the bones and cartilages of the sacral vertebrae, then in the lumbar vertebrae, and still later in the thoracic vertebrae. In beef which is very advanced in maturity, all the split vertebrae will be devoid of red color, very hard and flinty, and the cartilages on the ends of all the vertebrae will be entirely ossified. Likewise, with advancing maturity, the rib bones will become progressively wider and flatter until in very mature beef the ribs will be very wide and flat.

(l) In steer, heifer, and cow beef, the color and texture of the lean flesh also undergo progressive changes with advancing maturity. In the very youngest carcasses considered as "beef," the lean flesh will be very fine in texture and light grayish red in color. In progressively more mature carcasses, the texture of the lean will become progressively coarser and the color of the lean will become progressively darker red. In very mature beef, the lean flesh will be very coarse in texture and very dark red in color. Since color of lean also is affected by variations in quality, references to color of lean in the standards for a given degree of maturity vary slightly with different levels of quality. In determining

the maturity of a carcass in which the skeletal evidences of maturity are different from those indicated by the color and texture of the lean, slightly more emphasis is placed on the characteristics of the bones and cartilages than on the characteristics of the lean. In no case can the overall maturity of the carcass be considered more than one full maturity group different from that indicated by its bones and cartilages.

(m) The preceding two paragraphs also are applicable to the determination of quality in bullock beef except for carcasses having darker colors of lean than specified in the standards for the quality level for which they would otherwise qualify. In such carcasses, maturity will be evaluated on the basis of skeletal characteristics only, and the final grade will be determined in accordance with the procedures specified in the standards for grading "dark-cutting beef."

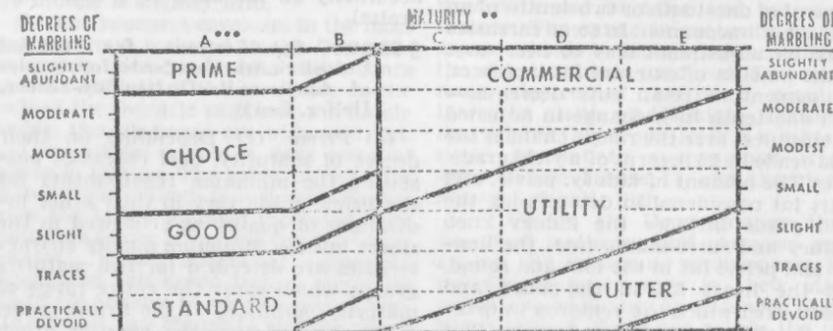
(n) In determining compliance with the maximum maturity limits for the Prime, Choice, Good, and Standard grades for steer, heifer, and cow carcasses, color and texture of the lean are considered only when the maturity-indicating factors other than color and texture of the lean indicate only a slightly more advanced degree of maturity than that specified as maximum for these grades, and provided further that the lean is considerably finer in texture and lighter in color than normal for the grade and maturity involved. The same principle, in reverse, is likewise applicable to determining compliance with the minimum maturity limits of the Commercial grade.

(o) These standards are applicable to the grading of beef throughout the full range of maturity within which cattle are marketed. However, in steer, heifer, and cow carcasses, the range of maturity permitted within each of the grades varies considerably. The Prime, Choice, Good, and Standard grades are restricted to beef from young cattle; the Commercial grade is restricted to beef from cattle too mature for Prime, Choice, Good, and Standard, and the Utility, Cutter, and Canner grades may include beef from animals of all ages. By definition, bullock carcasses are restricted to those whose evidences of maturity do not exceed those specified for the juncture of the two youngest maturity groups referenced in the standards for steer, heifer, and cow carcasses. Except for the youngest maturity group, within any specified grade, the requirements for marbling increase progressively with evidences of advancing maturity. In the youngest maturity group, the marbling requirements do not increase progressively with evidences of advancing maturity. For each grade, the firmness requirements are different for each maturity group, but, within each maturity group, the firmness requirements do not increase progressively with evidences of advancing maturity. Also, regardless of the extent to which marbling may exceed the minimum of a grade, a carcass must meet the minimum firmness requirements for its maturity to qualify for that grade. To facilitate the

application of these principles, the standards recognize five different maturity groups and seven different degrees of marbling. The five maturity groups are identified in Figure 1 as A, B, C, D, and E in order of increasing maturity. The limits of these five maturity groups are specified in the grade descriptions for steer, heifer, and cow carcasses. The A maturity portion of the figure is the only portion applicable to bullock carcasses.

The degrees of marbling referenced in the specifications, in order of descending quantity are: Slightly abundant, moderate, modest, small, slight, traces, and practically devoid. However, for carcass evaluation programs and other purposes, three higher degrees are recognized—moderately abundant, abundant, and very abundant. Illustrations of the lower limits of nine of these ten degrees of marbling are available from the Department of Agriculture.

RELATIONSHIP BETWEEN MARBLING, MATURITY, AND CARCASS QUALITY GRADE *



* Assumes that firmness of lean is comparably developed with the degree of marbling and that the carcass is not a "dark cutter."
 ** Maturity increases from left to right (A through E).
 *** The A maturity portion of the figure is the only portion applicable to bullock carcasses.

Figure 1

(p) The relationship between marbling, maturity, and quality grade is shown in Figure 1. This figure assumes that the firmness of lean is comparably developed with the degree of marbling and that the carcass is not a "dark cutter." From this figure it can be seen, for instance, that the minimum marbling requirement for Choice varies from a minimum small amount for carcasses throughout the youngest maturity group to a maximum small amount for carcasses having the maximum maturity permitted in Choice. Likewise, in the Commercial grade the minimum marbling requirement varies from a minimum small amount in beef with the minimum maturity permitted to a maximum moderate amount in beef from very mature animals. The marbling and other lean flesh characteristics specified for the various grades are based on their appearance in the ribeye muscle of properly chilled carcasses that are ribbed between the 12th and 13th ribs. For carcass evaluation programs and other purposes, in the Prime and Commercial grades, each additional degree of marbling (up to three) greater than specified as minimum for each of these grades is equal to one-third of a grade of higher quality.

(q) References to color of lean in the standards for steer, heifer, and cow beef involve only colors associated with changes in maturity. They are not intended to apply to colors of lean associated with so-called "dark-cutting beef." Dark-cutting beef is believed to be the result of a reduced sugar content of the lean at the time of slaughter. As a result,

this condition does not have the same significance in grading as do the darker shades of red associated with advancing maturity. The dark color of the lean associated with "dark-cutting beef" is present in varying degrees from that which is barely evident to so-called "black cutters" in which the lean is actually nearly black in color and usually has a "gummy" texture. Although there is little or no evidence which indicates that the "dark cutting" condition has any adverse effect on palatability, it is considered in grading because of its effect on acceptability and value. Depending on the degree to which this characteristic is developed, the final grade of carcasses which otherwise would qualify for the Prime, Choice, or Good grades may be reduced as much as one full grade. In beef otherwise eligible for the Standard or Commercial grade, the final grade may be reduced as much as one-half of a grade. In the Utility, Cutter, and Canner grades, this condition is not considered.

(r) The yield grade of a beef carcass is determined by considering four characteristics: (1) The amount of external fat, (2) the amount of kidney, pelvic, and heart fat, (3) the area of the ribeye muscle, and (4) the carcass weight.

(s) The amount of external fat on a carcass is evaluated in terms of the thickness of this fat over the ribeye muscle, measured perpendicular to the outside surface at a point three-fourths of the length of the ribeye from its chine bone end. This measurement may be adjusted, as necessary, to reflect unusual

amounts of fat on other parts of the carcass. In determining the amount of this adjustment, if any, particular attention is given to the amount of fat in such areas as the brisket, plate, flank, cod or udder, inside round, rump, and hips in relation to the actual thickness of fat over the ribeye. Thus, in a carcass which is fatter over other areas than is indicated by the fat measurement over the ribeye, the measurement is adjusted upward. Conversely, in a carcass which has less fat over the other areas than is indicated by the fat measurement over the ribeye, the measurement is adjusted downward. In many carcasses no such adjustment is necessary; however, an adjustment in the thickness of fat measurement of one-tenth or two-tenths of an inch is not uncommon. In some carcasses a greater adjustment may be necessary. As the amount of external fat increases, the percent of retail cuts decreases—each one-tenth inch change in adjusted fat thickness over the ribeye changes the yield grade by 25 percent of a yield grade.

(t) The amount of kidney, pelvic, and heart fat considered in determining the yield grade includes the kidney knob (kidney and surrounding fat), the lumbar and pelvic fat in the loin and round, and the heart fat in the chuck and brisket area which are removed in making closely trimmed retail cuts. The amount of these fats is evaluated subjectively and expressed as a percent of the carcass weight. As the amount of kidney, pelvic, and heart fat increases, the percent of retail cuts decreases—a change of 1 percent of the carcass weight in these fats changes the yield grade by 20 percent of a yield grade.

(u) The area of the ribeye is determined where this muscle is exposed by ribbing. This area usually is estimated subjectively; however, it may be measured. Area of ribeye measurements may be made by means of a grid calibrated in tenths of a square inch or by other devices designated by the Agricultural Marketing Service of the U.S. Department of Agriculture.¹ An increase in the area of ribeye increases the percent of retail cuts—a change of 1 square inch in area of ribeye changes the yield grade by approximately 30 percent of a yield grade.

(v) Hot carcass weight (or chilled carcass weight x 102 percent) is used in determining the yield grade. As carcass weight increases, the percent of retail cuts decreases—a change of 100 pounds in hot carcass weight changes the yield grade by approximately 40 percent of a yield grade.

(w) The standards include a mathematical equation for determining yield grade. This grade is expressed as a whole number; any fractional part of a designation is always dropped. For example, if the computation results in a designation of 3.9, the final grade is 3—it is not rounded to 4.

(x) The yield grade standards for each of the first four yield grades list

¹Information concerning such devices may be obtained from the Agricultural Marketing Service, Livestock Division.

characteristics of two carcasses of two different weights together with descriptions of the usual fat deposition pattern on various areas of the carcass. These descriptions are not specific requirements—they are included only as illustrations of carcasses which are near the borderlines between groups. For example, the characteristics listed for Yield Grade 1 represent carcasses which are near the borderline of Yield Grades 1 and 2.

These descriptions facilitate the subjective determination of the yield grade without making detailed measurements and computations. The yield grade for most beef carcasses can be determined accurately on the basis of a visual appraisal.

§ 53.104 Specifications for Official United States Standards for Grades of Carcass Beef (Quality—Steer, Heifer, Cow).

(a) *Prime.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Prime grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Prime grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidences of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum slightly abundant amount of marbling is required (see Figure 1) and the ribeye muscle is moderately firm.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Prime grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum slightly abundant to maximum slightly abundant (see Figure 1) and the ribeye muscle is firm.

(4) Beef produced from cows is not eligible for the Prime grade.

(b) *Choice.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Choice grade vary in their other indications of quality as evidenced in the

ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Choice grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is moderately light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum small amount of marbling is required (see Figure 1) and the ribeye muscle may be slightly soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Choice grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum small amount to a maximum small amount (see Figure 1) and the ribeye muscle is slightly firm.

(c) *Good.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Good grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Good grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum slight amount of marbling is required (see Figure 1) and the ribeye may be moderately soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to

those at the maximum maturity permitted in the Good grade which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In

addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum slight amount to a maximum slight amount (see Figure 1) and the ribeye muscle may be slightly soft.

(d) *Standard.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Standard grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Standard grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly dark red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum practically devoid amount of marbling is required (see Figure 1) and the ribeye muscle may be soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Standard grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean is moderately fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum practically devoid to maximum practically devoid (see Figure 1) and the ribeye muscle may be moderately soft.

(e) *Commercial.* (1) Commercial grade beef carcasses and wholesale cuts are restricted to those with evidences of more advanced maturity than permitted in the Standard grade. Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Commercial grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for the youngest and the most mature of these groups. The requirements for the intermediate group are determined by interpolation between the requirements indicated for the two groups described.

(2) Carcasses in the youngest group permitted in the Commercial grade range

from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is moderately dark red and slightly coarse in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum small amount to a maximum small amount (see Figure 1) and the ribeye muscle is slightly firm.

(3) The youngest carcasses in the most mature group included in the Commercial grade have hard white chine bones and the outlines of the cartilages on the ends of the thoracic vertebrae are barely visible, the rib bones are wide and flat, and the ribeye muscle is dark red and coarse in texture. The range in maturity in this group extends to include carcasses from the oldest animals marketed. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum slight amount to a maximum slight amount (see Figure 1) and the ribeye muscle is slightly firm.

(f) *Utility.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Utility grade vary in their other indications of quality as evidenced in the ribeye muscle. Carcasses within the full range of maturity classified as beef are included in the Utility grade. Thus, five maturity groups are recognized. Minimum quality requirements are described for three of these groups—the first or youngest, the third or intermediate, and the fifth or the most mature. The requirements for the second and fourth maturity groups are determined by interpolation between the requirements described for their adjoining groups.

(2) Carcasses in the first or youngest maturity group range from the youngest that are eligible for the beef class to those at the juncture of the first two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly dark red in color and fine in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be very soft and watery.

(3) Carcasses in the third or intermediate maturity group range from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is dark red in color and slightly coarse in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be soft and watery.

addition, the rib bones are moderately wide and flat and the ribeye muscle is dark red in color and slightly coarse in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum practically devoid to maximum practically devoid (see Figure 1) and the ribeye muscle may be moderately soft.

(4) The youngest carcasses in the fifth or oldest maturity group have hard, white chine bones and the outlines of the cartilages on the ends of the thoracic vertebrae are barely visible, the rib bones are wide and flat, and the ribeye muscle is very dark red in color and coarse in texture. The range in maturity in this group extends to include carcasses from the oldest animals produced. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum slight amount to a maximum slight amount (see Figure 1) and the ribeye muscle is slightly firm.

(g) *Cutter.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Cutter grade vary in their other indications of quality as evidenced in the ribeye muscle. Carcasses within the full range of maturity classified as beef are included in the Cutter grade. Thus, five maturity groups are recognized. Minimum quality requirements are described for three of these groups—the first or youngest, the third or intermediate, and the fifth or the most mature. The requirements for the second and fourth maturity groups are determined by interpolation between the requirements described for their adjoining groups.

(2) Carcasses in the first or youngest maturity group range from the youngest that are eligible for the beef class to those at the juncture of the first two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly dark red in color and fine in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be very soft and watery.

(3) Carcasses in the third or intermediate maturity group range from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is dark red in color and slightly coarse in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be soft and watery.

than in the higher grades. Most of the cutability differences among cattle qualifying for this grade are due to a wide range in muscling. Cattle with higher cutability than normal for this grade may have a slightly lower degree of fatness than described but will have thick, well-rounded backs, wide loins, and prominent, thickly muscled shoulders. The width through the rounds will be greater than over the back. Cattle with lower cutability than normal for this grade may have slightly more finish than described and will be upstanding and narrow. The loin, rump, and rounds will appear slightly sunken.

(e) *Commercial.* (1) The Commercial grade is limited to steers, heifers, and cows over approximately 42 months of age. Slaughter cattle possessing the minimum qualifications for Commercial and which slightly exceed the minimum maturity for the Commercial grade have a slightly thick fat covering over the back, ribs, loin, and rump and the muscling is moderately firm. Very mature cattle usually have at least a moderately thick fat covering over the back, ribs, loin, and rump and considerable patchiness frequently is evident about the tailhead. The brisket, flanks, and cod or udder appear to be moderately full and the muscling is firm.

(2) Cattle qualifying for the minimum of the Commercial grade will differ considerably in cutability because of widely varying combinations of muscling and degree of fatness. Cattle with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described for the Commercial grade. The thick, full muscling over the top results in a rounded appearance with little evidence of flatness. The thickness through the middle part of the rounds is greater than over the top and the thick muscling through the shoulders causes them to be slightly prominent. Although such cattle have less thickness of fat over the back and loin than described as typical, evidence of more fatness than described is especially noticeable in the brisket, flanks, twist, and cod or udder and the muscling is firmer than described. Conversely, cattle with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described for the Commercial grade. The distribution of fat is not typical, being thicker over the crops, back, loin, and rump than described while the brisket, flanks, twist, and cod or udder indicate less fatness. The back and loin break sharply into the sides and the width over the back is much greater than through the rounds and shoulders.

(f) *Utility.* (1) The minimum degree of finish required for slaughter steers, heifers, and cows to qualify for the Utility grade varies throughout the range of maturity permitted in this grade from a very thin covering of fat for cattle under 30 months of age to a slightly thick fat covering, generally restricted to the back, loin, and rump for the very mature cattle in this grade. In such mature cattle, the crops are slightly thin and the brisket, flanks, and cod or udder indicate very slight fullness.

(2) Cattle qualifying for the minimum of the Utility grade vary somewhat in cutability especially among older animals. Those under 42 months of age are required to have very little fatness to qualify for the minimum of the grade; thus most of the variation in cutability of such cattle is due to differences in muscling. Cattle over 42 months of age will vary in their degree of fatness as well as muscling. Thus, cattle with thicker muscling than normal and less external fat than specified for this grade will have higher cutability than cattle with thinner muscling and more fatness.

(g) *Cutter.* (1) In slaughter cattle in the Cutter grade, the degree of finish ranges from practically none in cattle under 30 months of age to very mature cattle which have only a very thin covering of fat.

(2) The range in cutability among cattle that qualify for the minimum of this grade will be narrow because of very small variations in fatness and muscling.

(h) *Canner.* Canner grade cattle are those which are inferior to the minimum specified for the Cutter grade.

§ 53.205 Specifications for Official United States Standards for Grades of Slaughter Bullocks (Quality).

(a) *Prime.* (1) Slaughter bullocks possessing the minimum qualifications for the Prime grade have a moderately thick but smooth covering of fat which extends over the back, ribs, loin, and rump. The brisket and flanks show a marked fullness and the muscling is firm.

(2) Bullocks qualifying for the minimum of the Prime grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described as minimum for the Prime grade. Such bullocks have less width of back and loin and are less uniform in width than described as typical for the Prime grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described as minimum for the Prime grade.

(b) *Choice.* (1) Slaughter bullocks possessing minimum qualifications for the Choice grade carry a slightly thick fat covering over the top. The brisket and flanks appear moderately full and the muscling is moderately firm.

(2) Bullocks qualifying for the minimum of the Choice grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described as minimum for the Choice grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described as minimum for the Choice grade.

(c) *Good.* (1) Bullocks possessing minimum qualifications for the Good grade have a thin fat covering which is largely restricted to the back and loin. The brisket and flanks are slightly full and the muscling is slightly firm.

(2) Bullocks qualifying for the minimum of the Good grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for the grade are thickly muscled and have a lower degree of fatness than described as minimum for the Good grade. Such bullocks are less uniform in width than described as typical of the grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade have thinner muscling and a higher degree of fatness than described as minimum for the Good grade.

(d) *Standard.* (1) Slaughter bullocks possessing minimum qualifications for the Standard grade have only a very thin covering of fat which is largely restricted to the back, loin, and upper rib.

(2) Bullocks qualifying for the minimum of this grade vary relatively little in their degree of fatness. Therefore, the range in cutability among bullocks that qualify for this grade is somewhat less than in the higher grades. Most of the cutability differences among bullocks qualifying for this grade are due to a wide range in muscling. Bullocks with higher cutability than normal for this grade may have a slightly lower degree of fatness than described but will have thick, well-rounded backs, wide loins, and prominent, thickly muscled shoulders. The width through the rounds will be greater than over the back. Bullocks with lower cutability than normal for this grade may have slightly more finish than described and will be upstanding and narrow. The loin, rump, and rounds will appear slightly sunken.

(e) *Utility.* The Utility grade includes only those bullocks that do not meet the minimum requirements specified for the Standard grade.

§ 53.206 Specifications for Official United States Standards for Grades of Slaughter Cattle (Yield).

(a) *Yield Grade 1.* (1) Yield Grade 1 slaughter cattle produce carcasses with very high yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 1 (near the borderline between Yield Grade 1 and Yield Grade 2) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are moderately wide and the width through the shoulders and rounds is greater than through the back. The top is well-rounded with no evidence of flatness, and the back and loin are thick and full. The rounds are deep, thick, and full and the width through the middle part of the rounds is greater than through the back.

The shoulders are slightly prominent and the forearms are thick and full. These cattle have only a thin covering of fat over the back and rump. The flanks are slightly shallow and the brisket and cod or udder have little evidence of fullness. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.3 of an inch of fat over the ribeye and about 13.0 square inches of ribeye area.

(3) Because of the relatively low proportion of lean to bone, practically no thinly muscled cattle produce carcasses with an exceptionally high yield of boneless retail cuts. Therefore, it is unlikely that thinly muscled cattle will qualify for Yield Grade 1.

(4) Cattle qualifying for the minimum of Yield Grade 1 will differ widely in quality grade as a result of variations in distribution of finish and firmness of muscling. For example, young cattle which have considerable firmness of muscling and considerably greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 1 ordinarily will qualify for the Good or Choice grade. However, such cattle with typical or less than typical deposits of fat in the brisket, flanks, twist, and cod or udder usually will qualify for the Standard or Utility grade.

(b) *Yield Grade 2.* (1) Yield Grade 2 slaughter cattle produce carcasses with high yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 2 (near the borderline between Yield Grade 2 and Yield Grade 3) will differ considerably in appearance because of differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are wide through the back and loin and have slightly greater width through the shoulders and rounds than through the back. The top is well-rounded with little evidence of flatness and the back and loin are thick and full. The rounds are thick, full, and deep and the thickness through the middle part of the rounds is greater than that over the top. The shoulders are slightly prominent and the forearms are thick and full. There is a slightly thick covering of fat over the back and rump and the flanks are slightly deep. The brisket and cod or udder are slightly full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.6 of an inch of fat over the ribeye and about 12.5 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low proportion of lean to bone. They tend to be flat and slightly narrow over the back and have slightly long, flat rounds. They are slightly wider over the back than through the rounds. The shoulders are slightly prominent and the forearms are only slightly thick. These cattle have a thin covering of fat over the back and rump. The flanks are slightly shallow and thin and the brisket and cod or udder have little evidence of fullness. Slaughter cattle of this description producing 600 pound carcasses usually have 0.3 of an inch of fat over the ribeye and about 10.0 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 2 will differ greatly in quality grade as a result of variations in distribution of finish and firmness of muscling. For example, young cattle which have considerable firmness of muscling and typical or greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 2 ordinarily will qualify for Prime or Choice. Conversely, such cattle with less than typical deposits of fat in the brisket, flanks, twist, and cod or udder usually will qualify for the Good or Standard grade.

(c) *Yield Grade 3.* (1) Yield Grade 3 slaughter cattle produce carcasses with intermediate yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 3 (near the borderline between Yield Grade 3 and 4) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are very wide through the back and loin and are uniform in width from front to rear. The back or top is nearly flat with only a slight tendency toward roundness and there is a slight break into the sides. The back and loin are very full and thick. The rounds are deep, thick, and full. The shoulders are smooth and the forearms are thick and full. There is a moderately thick covering of fat over the back and rump. The flanks are deep and full and the brisket and cod or udder are full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.9 of an inch of fat over the ribeye and about 12.0 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low proportion of lean to bone. They are flat and slightly wide over the back and loin and are wider over the back than through the rounds. The shoulders are slightly smooth and the forearms are only slightly thick. These cattle tend to have a slightly thick covering of fat over the back and rump. The flanks are slightly deep and full and the brisket and cod or udder are slightly full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.6 of an inch of fat over the ribeye and about 9.5 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 3 will differ greatly in quality grade as a result of wide variations in distribution of finish and firmness of muscling. Cattle with higher quality than normal for the minimum of this grade will have very firm muscling and will have greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 3 and will normally qualify for the Prime or Choice grade. Conversely, cattle with lower quality than normal for the minimum of this grade will have less deposits of fat in the brisket, flanks, twist, and cod or udder than described herein, and may only qualify for the Good grade.

(d) *Yield Grade 4.* (1) Yield Grade 4 slaughter cattle produce carcasses with moderately low yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 4 (near the borderline between Yield Grades 4 and 5) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They appear wider over the top than through the shoulders or rounds. The back and loin are very thick and full, nearly flat, and break sharply into the sides. The rounds are deep, thick, and full. The shoulders are smooth and the forearms are thick and full. These cattle have a thick covering of fat over the back and rump. The flanks are very deep and full and the brisket and cod or udder are very full. Slaughter cattle of this description producing 600-pound carcasses usually have about 1.1 inches of fat over the ribeye and about 11.5 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low ratio of lean to bone. They are flat over the back and loin and much wider through the back than through the shoulders or rounds. The rounds tend to be long and flat. The shoulders are smooth and the forearms are slightly thick. The cattle have a moderately thick covering of fat over the back and rump and the back breaks sharply into the sides. The flanks are deep and full and the brisket and cod or udder are full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.9 of an inch of fat over the ribeye and about 9.0 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 4 will differ somewhat in quality grade as a result of variations in distribution of the finish and firmness of muscling. Most cattle at the minimum of this grade will qualify for the Prime or Choice grade. However, some cattle at the minimum of Yield Grade 4 with less deposits of fat in the brisket, flanks, twist, and cod or udder than described as typical may only qualify for the Good grade.

(e) *Yield Grade 5.* (1) Yield Grade 5 slaughter cattle produce carcasses with low yields of boneless retail cuts. Cattle of this grade consist of those not meeting the minimum requirements for Yield Grade 4 because of either more fat or less muscle or a combination of these characteristics.

(2) Because of the high degree of finish required for cattle of this grade, the range in quality grades will be somewhat small. Practically all cattle of this grade will qualify for either the Prime or Choice grade.

The inflationary impact of these revisions of the grade standards has been evaluated.

The foregoing changes shall become effective April 14, 1975.

Done at Washington, D.C., this 6th day of March 1975.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

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