with the manufacturers, which will result in serving customers better, constitutes a form of worksharing for which compensation should be made. Manufacturers are engaged in a profitmaking enterprise and must incur some costs as the price of doing business. The Postal Service, on the other hand, collects no fees for processing meter applications from either manufacturers or licensees.

One of the same commenters noted that MATS was not addressed in the proposed regulations.

MATS does not pertain to these regulations because it is a separate system being developed and implemented by another department within the Postal Service.

D. Performance Regulations

No comments were received.

E. Suspension and Revocation

One commenter stated that the criteria on which the Postal Service may suspend or revoke a meter manufacturer's authorization under 39 CFR 501.5 or approval of a meter under 39 CFR 501.12 fail to provide clear and ascertainable standards to guide meter manufacturer conduct or Postal Service decisionmaking. In the commenter's view, 39 CFR 501.5 authorizes the Postal Service to revoke a meter manufacturer's authorization based on potentially minor violations and in a manner not readily amenable to judicial review. The commenter suggested that suspension under 39 CFR 501.5 be imposed only when the Postal Service determines that a manufacturer has committed serious or persistent violations.

With respect to 39 CFR 501.5, the Postal Service refers the commenter to paragraph (b) of that section, which clearly sets forth the criteria in forming a decision to suspend or revoke. One of these factors is the "nature and circumstances of the violation." This factor enables the Postal Service to consider the seriousness of the violation in determining whether to suspend or revoke a manufacturer's authorization. Thus, if the violation is not serious, the sanction imposed, if any, can be narrowly tailored to fit the circumstances.

With respect to 39 CFR 501.12, the Postal Service refers the commenter to paragraph (a) of that section, which establishes the criteria to be evaluated when determining to suspend approval to manufacture or distribute a meter or class of meters. The rule clearly provides that decisionmaking will be based on the potential risk to postal revenue. Thus, the rule contemplates

that when the risk to postal revenue is high in terms of amount and probability of loss, a suspension is more likely; when the amount at stake and probability of loss are low, suspension is less likely.

One commenter suggested that the standard of proof required by the Postal Service to suspend or revoke a meter manufacturer's authorization be raised to "clear and convincing evidence" instead of "preponderance of evidence."

The Postal Service does not subscribe to the commenter's view. First, the Postal Reorganization Act (Pub. L. No. 91-375, 84 Stat. 719 (1970)) is silent on regulation of the meter industry, and there is no suggestion in the legislative history that a standard of proof higher than a preponderance of the evidence was ever contemplated in this context, much less intended. Nor is the nature of the proceeding and parties affected similar to those in which courts have imposed a higher standard. The U.S. Supreme Court has generally required proof by clear and convincing evidence where "particularly important individual interests or rights are at stake," such as the potential deprivation of individual liberty, citizenship, or parental rights. Herman & MacLean v. Huddleston, 459 U.S. 375, 389 (1983). Such compelling individual interests are not present here.

Second, adoption of the commenter's proposal would, in essence, express a preference for the manufacturers' interests. The balance of interests here, however, warrants use of the preponderance standard. Postal Service revenue is placed at risk when manufacturers fail to execute their responsibilities in accordance with postal regulations. As experience demonstrates, this risk is not insubstantial. Ratepayers ultimately bear the cost of covering these losses. The interests of the manufacturers are thus outweighed by the interests of the Postal Service and ratepayers in protecting postal revenue.

One commenter stated that the Postal Service does not have the statutory authority to impose punitive sanctions.

The Postal Service does not accept the commenter's suggestion that express statutory authority is a prerequisite to the Postal Service's imposition of administrative sanctions in this context. In enacting the Postal Reorganization Act, Congress delegated broad rulemaking authority to the Postal Service to manage its operations. Largely absent from the Postal Reorganization Act are provisions establishing detailed postage payment programs. Prior to the enactment of the Postal Reorganization Act, Congress

established that postage could be paid by meter. This statutory framework was eliminated by the Postal Reorganization Act, leaving no specific statutory authority for any meter program. Rather than addressing the specific methods of payment of postage available to ratepayers, the Postal Reorganization Act merely provides that the Postal Service has the power "to prescribe, in accordance with [title 39], the amount of postage and the manner in which it is to be paid" and "to provide such other evidences of payment of postage and fees as may be necessary or desirable.' 39 U.S.C. 404(a)(2), (4). Accordingly, the Postal Reorganization Act evinces the intent of Congress to divest itself of the details of postage payment systems, including meters, and to delegate to the Postal Service the responsibility for establishing and maintaining programs for postage payment systems and their attending regulatory schemes. It is therefore implicit from the text of the Postal Reorganization Act that Congress delegated to the Postal Service authority to promulgate a regulatory scheme for the postage meter program without need for express statutory authority establishing the postage meter program.

Notwithstanding, in the view of the Postal Service the proposed administrative sanctions are not penalties because only make-whole relief is contemplated. As such, no express statutory authority is required. See Gold Kist v. U.S. Dep't of Agriculture, 741 F.2d 344, 347-48 (11th Cir. 1984), amended in part, 751 F.2d 115 (11th Cir. 1985); Frame v. United States, 885 F.2d 1119, 1142 (3d Cir. 1989), cert. denied, 493 U.S. 1094 (1990). Both the Frame and Gold Kist courts generally held that agencies have the power to impose administrative sanctions that are not penalties if the sanctions are remedial and reasonably related to the purposes of the enabling statutes. If the purpose of an administrative sanction is "not to stigmatize or punish wrongdoers," the sanction is remedial rather than punitive. Frame, 885 F.2d at 1143 (citing West v. Bergland, 611 F.2d 710, 722 n.14 (8th Cir. 1979), cert. denied, 449 U.S. 821 (1990)).

The proposed regulations at issue here are strictly remedial. Their purpose is not to punish or stigmatize manufacturers; rather, they serve to make the Postal Service whole for its losses attributable to manufacturers' products or conduct. Indeed, the Postal Service does not seek to recover any amount exceeding its costs or losses, net of any amount collected by meter users. The proposed sanctions merely permit the Postal Service to collect a fair