

DATES: This correction is effective April 11, 2005.

FOR FURTHER INFORMATION CONTACT: J. David Varley (202) 435-5165 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9194) that is the subject of this correction are under section 937 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9194) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 1 and 301 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.934-1T [Corrected]

■ 1. Section 1.934-1T(d), *Example 1*, paragraph (iii), the formula is revised to read as follows: $(20,000 + 10,000) \times ((45,000 + 15,000) / (120,000)) - 10,000 \times ((15,000) / (15,000 + 22,500)) = 30,000 \times (.5) - 10,000 \times (.4) = 15,000$ minus; 4,000 = \$11,000

§ 1.935-1T [Corrected]

■ 2. Section 1.935-1T(e)(1)(ii) is amended by removing the language "election filed" and adding the language "election is filed" in its place.

§ 1.937-1T [Corrected]

■ 3. Section 1.937-1T(c)(4)(ii)(B) is amended by removing the language "(c)(4)(B)" and adding the language "(c)(4)(i)(B)" in its place.

§ 1.937-3T [Corrected]

■ 4. Section 1.937-3T(b), second sentence, is amended by removing the language "under the rules of 1.937-2T)" and adding the language "under the rules of § 1.937-2T)" in its place.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 2.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.7701(b)-1T [Corrected]

■ 5. Section 301.7701(b)-1T is amended by removing the period at the end of the section heading and adding the language "(temporary)." in its place.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05-11029 Filed 6-2-05; 8:45 am]

BILLING CODE 4830-01-P

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Parts 401, 402, and 403

American Battle Monuments Commission Policies on Overseas Memorials

AGENCY: American Battle Monuments Commission.

ACTION: Final regulation

SUMMARY: The American Battle Monuments Commission (ABMC) is updating its regulations on overseas memorials in order to reflect actual practice and current statutory requirements.

DATES: Effective June 3, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Sole, Director of Engineering and Maintenance, American Battle Monuments Commission, Suite 500, 2300 Clarendon Blvd, Arlington, VA, 22201-3367; telephone: (703) 696-6899; FAX: (703) 696-6666.

SUPPLEMENTARY INFORMATION:

I. Background

ABMC published the proposed regulation in the **Federal Register** on April 19, 2005 (see 70 FR 20324-20326) for a public comment period. Pursuant to Chapter 21, Title 36 United States Code, the ABMC is generally responsible for overseas memorials and monuments honoring the sacrifices of the American Armed Forces. ABMC's regulations on the performance of this function have not been updated since 1970. Since that time Congress has established within ABMC a Memorial Trust Fund Program the terms of which are codified at 36 U.S.C. 2106(b-e). The purpose of this final regulation is to set forth agency policy implementing 36

U.S.C. 2106(b-e) and to place all agency guidance on overseas memorial responsibilities in one comprehensive document. This part 401 supersedes existing part 401 and rescinds existing parts 402 and 403.

II. Comment

ABMC received one comment on the proposed regulation. That comment asserted that aspects of the evaluation criteria identified in section 401.9 for consideration in approving requests to construct a memorial deserved reconsideration. The commenter suggested that a process for exceptions in light of the unique circumstances that can arise in today's environment would be helpful.

Other than the criteria calling for a ten year waiting period, adequate funding, and host nation approval set forth in sections 401.9(a)-(c), the remaining criteria are not stated as absolute requirements. These other criteria are evaluated on a case by case basis with particular regard to the unique circumstances of each request. ABMC identified the ten year minimum waiting period requirement because this time period was established by Congress for approval of such memorials in the District of Columbia and its environs through the Commemorative Works Act as an appropriate period of time and there was no apparent reason to establish a different time frame for overseas memorials (see 40 U.S.C. section 8903(b)).

III. Final Regulation as Adopted

List of Subjects in 36 CFR Parts 401, 402, and 403

Monuments and memorials.

■ For the reasons set forth in the preamble, American Battle Monuments Commission amends 36 CFR Chapter IV as follows:

■ 1. Part 401 is revised to read as follows:

PART 401—MONUMENTS AND MEMORIALS

Sec.

- 401.1 Purpose.
- 401.2 Applicability and scope.
- 401.3 Background.
- 401.4 Responsibility.
- 401.5 Control and supervision of materials, design, and building.
- 401.6 Approval by National Commission of Fine Arts.
- 401.7 Cooperation with other than government entities.
- 401.8 Requirement for Commission approval.
- 401.9 Evaluation criteria.
- 401.10 Monument Trust Fund Program.
- 401.11 Demolition criteria.

Authority: 36 U.S.C 2105; 36 U.S.C. 2106

§ 401.1 Purpose.

This part provides guidance on the execution of the responsibilities given by Congress to the American Battle Monuments Commission (Commission) regarding memorials and monuments commemorating the service of American Armed Forces at locations outside the United States.

§ 401.2 Applicability and scope.

This part applies to all agencies of the United States Government, State and local governments of the United States and all American citizens, and private and public American organizations that have established or plan to establish any permanent memorial commemorating the service of American Armed Forces at a location outside the United States. This chapter does not address temporary monuments, plaques and other elements that deployed American Armed Forces wish to erect at a facility occupied by them outside the United States. Approval of any such temporary monument, plaque or other element is a matter to be determined by the concerned component of the Department of Defense consistent with host nation law and any other constraints applicable to the presence of American Armed Forces at the overseas location.

§ 401.3 Background.

Following World War I many American individuals, organizations and governmental entities sought to create memorials in Europe commemorating the service of American Armed Forces that participated in that war. Frequently such well-intended efforts were undertaken without adequate regard for many issues including host nation approvals, design adequacy, and funding for perpetual maintenance. As a result, in 1923 Congress created the American Battle Monuments Commission to generally oversee all memorials created by Americans or American entities to commemorate the service of American Armed Forces at locations outside the United States.

§ 401.4 Responsibility.

The Commission is responsible for building and maintaining appropriate memorials commemorating the service of American Armed Forces at any place outside the United States where Armed Forces have served since April 6, 1917.

§ 401.5 Control and supervision of materials, design, and building.

The Commission controls the design and prescribes regulations for the building of all memorial monuments and buildings commemorating the service of American Armed Forces that

are built in a foreign country or political division of the foreign country that authorizes the Commission to carry out those duties and powers.

§ 401.6 Approval by National Commission of Fine Arts.

A design for a memorial to be constructed at the expense of the United States Government must be approved by the National Commission of Fine Arts before the Commission can accept it.

§ 401.7 Cooperation with other than Government entities.

The Commission has the discretion to cooperate with citizens of the United States, States, municipalities, or associations desiring to build war memorials outside the United States.

§ 401.8 Requirement for Commission approval.

No administrative agency of the United States Government may give assistance to build a memorial unless the plan for the memorial has been approved by the Commission. In deciding whether to approve a memorial request the Commission will apply the criteria set forth in § 401.9.

§ 401.9 Evaluation criteria.

Commission consideration of a request to approve a memorial will include, but not be limited to, evaluation of following criteria:

Criteria	Discussion
(a) How long has it been since the events to be honored took place?	Requests made during or immediately after an event are not generally subject to approval. The Commission will not approve a memorial until at least 10 years after the officially designated end of the event. It should be noted that this is the same period of time made applicable to the establishment of memorials in the District of Columbia and its environs by the Commemorative Works Act.
(b) How will the perpetual maintenance of the memorial be funded?	Available adequate funding or other specific arrangements addressing perpetual care are a prerequisite to any approval.
(c) Has the host nation consented?	Host nation approval is required.
(d) Is an overseas site appropriate for the proposed permanent memorial?	In many circumstances a memorial located within the United States will be more appropriate.
(e) Is the proposed memorial intended to honor an individual or small unit?	Memorials to elements smaller than a division or comparable unit or to an individual will not be approved unless the services of such unit or individual clearly were of such distinguished character as to warrant a separate memorial.
(f) Is the memorial historically accurate?	Representations should be supported by objective authorities.
(g) Is the proposed memorial intended to honor an organizational element of the American Armed Forces rather than soldiers from a geographical area of the United States?	As a general rule, memorials should be erected to organizations rather than to troops from a particular locality of the United States.
(h) Does the contribution of the element to be honored warrant a separate memorial?	The commemoration should normally be through a memorial that would have the affect of honoring all of the American Armed Forces personnel who participated rather than a select segment of the organizational participants.

§ 401.10 Monument Trust Fund Program.

Pursuant to the provisions of 36 U.S.C. 2106(d), the Commission operates a Monument Trust Fund Program (MTFP) in countries where there is a Commission presence. Under the MTFP, the Commission may assume both the sponsor's legal interests in the

monument and responsibility for its maintenance. To be accepted in the Monument Trust Fund Program, an organization must develop an acceptable maintenance plan and transfer sufficient monies to the Commission to fully fund the maintenance plan for at least 30 years.

To The Commission will put this money into a trust fund of United States Treasury instruments that earn interest. Prior to acceptance into the MTFP, the sponsor must perform any deferred maintenance necessary to bring the monument up to a mutually agreeable standard. At that time, the Commission

may assume the sponsoring organization's interest in the property and responsibility for all maintenance and other decisions concerning the monument. Once accepted into the program, the Commission will provide for all necessary maintenance of the monument and charge the cost to the trust fund. to The sponsoring organization or others interested in the monument may add to the trust fund at any time to insure that adequate funds remain available. to The Commission will maintain the monument for as long a period as the trust fund account permits.

§ 401.11 Demolition criteria.

As authorized by the provisions of 36 U.S.C. 2106(e), the Commission may take necessary action to demolish any war memorial built outside the United States by a citizen of the United States, a State, a political subdivision of a State, a governmental authority (except a department, agency, or instrumentality of the United States Government), a foreign agency, or a private association and to dispose of the site of the memorial in a way the Commission decides is proper, if—

(a) The appropriate foreign authorities agree to the demolition; and

(b)(1) The sponsor of the memorial consents to the demolition; or

(2) The memorial has fallen into disrepair and a reasonable effort by the Commission has failed—

(i) To persuade the sponsor to maintain the memorial at a standard acceptable to the Commission; or

(ii) To locate the sponsor.

PART 402—[REMOVED]

■ 2. Part 402 is removed.

PART 403—[REMOVED]

■ 3. Part 403 is removed.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 05-11040 Filed 6-2-05; 8:45 am]

BILLING CODE 6120-01-P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2005-3; Order No. 1439]

Negotiated Service Agreements

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules on procedures related to negotiated service agreements. The rules are

designed to assist in clarifying the type of requests that qualify as extensions and the type of conditions that constitute modifications. Relative to the proposed rules, the final set of rules reflect several changes based on consideration of comments. These changes include adoption of deadlines for issuance of a recommended decision.

DATES: Effective July 5, 2005.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, general counsel, at 202-789-6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 52552, September 4, 2003.

69 FR 7574, February 18, 2004.

70 FR 4802, January 31, 2005.

70 FR 7704, February 15, 2005.

I. Introduction

This Order concludes the rulemaking docket addressing rules applicable to:

(1) Postal Service requests to extend the duration of previously recommended and currently in effect negotiated service agreements, and (2) Postal Service requests to make modifications to previously recommended and currently in effect negotiated service agreements. The final rules appear after the Secretary's signature in this Order.

A notice and order establishing this rulemaking docket was issued on February 10, 2005.¹ The notice and order proposed a set of applicable rules, and established a March 14, 2005, date for interested persons to submit comments. It also established an April 11, 2005, date for interested persons to submit reply comments. Initial comments were received from Bank One Corporation (Bank One), Discover Financial Services, Inc. (DFS), HSBC North America Holdings Inc. (HSBC), Office of the Consumer Advocate (OCA), the United States Postal Service (Postal Service), and Valpak Direct Marketing Association, Inc. (Valpak).² Reply

¹ Notice and Order Establishing Rulemaking Docket for Consideration of Proposed Rules Applicable to Requests to Renew or Modify Previously Recommended Negotiated Service Agreements, Order No. 1430, February 10, 2005; 70 FR 7704 (2005).

² Initial Comments of Bank One Corporation; Initial Comments of Discover Financial Services, Inc. (DFS); Initial Comments of HSBC North America Holdings Inc.; Office of the Consumer Advocate Comments in Response to Commission Order No. 1430; Initial Comments of the United States Postal Service; and Comments of Valpak

comments were received from Bank One Corporation, Discover Financial Services, Inc., Office of the Consumer Advocate, and the United States Postal Service.³

The Commission appreciates the efforts of the commenters that participated in the process of developing new rules applicable to requests to renew or modify negotiated service agreements. This process is ongoing, and the rules are subject to change as more experience is gained in reviewing requests predicated on negotiated service agreements. A number of comments that improve clarity or specify requirements that the Commission originally did not consider were incorporated into the rules. All comments were appreciated, whether or not they led to an actual modification of a proposed rule, because the comments provide different points of view that the Commission otherwise might not have considered. A discussion of notable comments follows.

II. Discussion

Role of the Commission. Bank One argues that "the Commission should adopt light-handed regulation of proposals to renew or modify existing NSAs as the presumptive starting point." This argument is prefaced by the statement: "A request to renew or modify an existing NSA involves, by definition, an agreement whose basic terms have already been found by the Commission to be profitable for the Postal Service, free of undue discrimination against competitors of the NSA partner, and unobjectionable on any other identifiable ground." Bank One Comments at 8.

A Commission recommendation of a negotiated service agreement is not as conclusive as characterized by Bank One. A Commission recommendation is based on a reasonable probability that the agreement will be profitable, and an appearance that the agreement will be free of undue discrimination against competitors of the negotiated service agreement's partner. These conclusions are reached after independently analyzing the agreement and weighing the arguments of all participants in the proceeding. A finding of actual profitability can only be estimated after

Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. in Response to PRC Order No. 1430, all filed March 14, 2005.

³ Reply Comments of Bank One Corporation; Reply Comments of Discover Financial Services, Inc. (DFS); Office of the Consumer Advocate Reply Comments in Response to Commission Order No. 1430; and Reply Comments of the United States Postal Service, all filed April 11, 2005.