

(4) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(i) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 calendar days of the date of the appeal decision.

Dated: February 18, 2000.

**Stuart P. Seidel,**

*Assistant Commissioner, Office of Regulations and Rulings.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 801

[Docket No. 99N-2550]

#### Medical Devices; Hearing Aids; Technical Data Amendments; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of March 17, 2000, for the final rule that appeared in the **Federal Register** of November 3, 1999 (64 FR 59618). The direct final rule amends regulations governing hearing aid labeling to reference the most recent version of the consensus standard used to determine technical data to be included in labeling for hearing aids. This amendment allows manufacturers to use state-of-the-art methods to address technical data in labeling for hearing aids. This document confirms the effective date of the direct final rule.

**DATES:** Effective date confirmed: March 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** David A. Segerson, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2080.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 3, 1999 (64 FR 59618), FDA solicited comments concerning the direct final rule for a 75-day period ending January 17, 2000. FDA stated that the effective date of the direct final rule would be on March 17, 2000, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections or requests for a hearing were filed in response to the November 3, 1999, direct final rule. Accordingly, the amendments issued thereby are effective.

Dated: February 17, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00-4404 Filed 2-24-00; 8:45 am]

BILLING CODE 4160-01-F

## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Order No. 1285; Docket No. RM2000-1]

#### Practice and Procedure; Cost, Revenue and Volume Data Generated by International Mail Services

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts permanent rules for the analysis of cost, revenue and volume data generated by the Postal Service's international mail services. These rules will assist the Commission in preparing annual reports to Congress, as required by law.

**DATES:** Effective February 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 1333 H Street NW., Washington, DC 20268-0001, 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On January 26, 1999, Commission order no. 1226 in docket no. IM99-1 was published in the **Federal Register** (64 FR 3991). On November 26, 1999, the Commission issued order no. 1270 in docket no. RM2000-1 (64 FR 66436). On February 15, the Commission issued this order [no. 1285] in docket no. RM200-1 and directed that it be published in the **Federal Register**.

## Background

On October 21, 1998, Public Law 105-277 was signed into law, adding section 3663 to the Postal Reorganization Act (PRA) (39 U.S.C. 3663). It requires that by July 1 of each year, the Commission "transmit to each House of Congress a comprehensive report of the costs, revenues, and volumes" accrued by the Postal Service "in connection with mail matter conveyed between the United States and other countries" for the prior fiscal year. To enable the Commission to carry out that directive, section 3663 requires the Postal Service to provide, by March 15, "such data as the Commission may require" to prepare that report. It states that the data provided

shall be in sufficient detail to enable the Commission to analyze the costs, revenues, and volumes for each international mail product or service, under the methods determined appropriate by the Commission for analysis of rates for domestic mail.

## Initial Notice of Proposed Rulemaking

On June 30, 1999, the Commission transmitted its first annual report on international mail to Congress. On November 18, 1999, the Commission issued a notice of proposed rulemaking (NPRM) inviting interested persons to comment on the Commission's initial effort to satisfy the requirements of 39 U.S.C. 3663. The NPRM invited comments on what data the Postal Service should provide to the Commission each year to enable the Commission to prepare its report. In particular, the Commission invited comment on its proposed rule 103, which appeared as appendix A to the NPRM. Proposed rule 103 would add to the Commission's periodic reporting rules, a list of items to be included in the Postal Service's data submission that must be filed by March 15 of each year under section 3663(b). The NPRM also invited comments on the appropriate scope and detail of the Commission's annual international mail report, including the analytical methods that should be applied to calculate the costs, revenues, and volumes of international mail services.

The NPRM described the efforts of several of the Postal Service's competitors to obtain the information that the Postal Service provided to the Commission to enable it to prepare its initial report on international mail. The NPRM invited comments on the procedures that should be employed to determine which portions of the report or supporting documents should not be publicly disclosed, what criteria or standards should govern that determination, what categories of

commercial information meet those standards, and the basis for any such comments. The NPRM also invited comments on any other issues that interested persons considered relevant to the Commission's duty to analyze and report on international mail costs, revenues, and volumes under section 3663.

#### *I. Information Needed to Prepare the Report*

Section 3663(b) of title 39 requires the Postal Service to provide by March 15 of each year the information necessary to enable the Commission to prepare its international mail report, which is due on July 1 of each year. In its NPRM the Commission proposed to regularize the set of international mail information items that the Postal Service is to provide annually by March 15 by including them in the set of periodic reports that the Postal Service is required to file. In appendix A to the NPRM, the Commission presented proposed rule 103 [proposed 39 C.F.R. 3001.103] which included a list of specific information items that the Postal Service would be required to provide by March 15 of each year. Several sets of comments were received on the adequacy of that list.

#### A. The ICRA—PRC and USPS Versions

The International Cost and Revenue Analysis (ICRA) report summarizes how the costs of collecting, handling, transporting, and delivering international mail are attributed to specific international services. Some of those costs are incurred by international mail while it is in the domestic mail network. There are some differences in the methods by which the Postal Service attributes the costs of the domestic network and the methods by which the Commission attributes these costs. The Commission needs a version of the ICRA that follows Commission-approved attribution methods in order to prepare its international mail report. It also needs a version of the ICRA that follows the attribution methods that the Postal Service prefers in order to isolate the effect of methodological changes that the Postal Service introduces from year to year from the effect of applying Commission approved methods.

Proposed rule 103 would require the Postal Service to provide both a PRC and a USPS version of the ICRA on March 15 of each year. The Postal Service states that in order to comply with the Commission's request to produce a PRC version of the fiscal year (FY) 1998 ICRA by the March 15, 1999 deadline, it had to defer the production of its own internal version of the ICRA,

due to resource constraints. It asserts that resource constraints preventing the simultaneous production of PRC and USPS versions of the ICRA will persist in the future, and argues that no deadline be imposed on its production of the USPS version of the ICRA. It says that it should be able to provide the USPS version of the ICRA shortly after the PRC version is provided. It argues that this should not disadvantage the Commission. It explains that if it plans to make changes in the methods that it uses to attribute international mail costs to the various international services, and it would like the Commission to affirm them, it expects to incorporate them in the PRC version of the ICRA. Initial Comments of United States Postal Service, filed December 27, 1999, at 5 (Postal Service Comments).

The Commission believes that a specific deadline for providing the USPS version remains necessary in order to avoid the situation that the Commission faced in preparing its initial international mail report. The Postal Service made changes to the methods that it used to estimate attributable international air transportation costs and to estimate the settlement difference that had major impacts on the cost coverages that it calculated for several international mail services and for international mail as a whole. These changes first appeared in the USPS version of the ICRA which the Postal Service provided to the Commission on June 7, 1999. Because there was not enough time to carefully evaluate these proposed changes, cost coverages for each international mail service based on Commission-approved methods and the new methods introduced by the Postal Service were calculated. The Commission's international mail report included appendices illustrating the impact that the Postal Service's new, but unevaluated, methods would have had on international mail cost coverages. The Commission would prefer to receive notice of such methodological changes in time to thoroughly evaluate their rationale and verify that they have been accurately applied.

Final rule 103 retains the requirement that the Postal Service provide an audited PRC version of the ICRA by March 15 of each year. In light of the resource constraints cited by the Postal Service, and its expectation that significant methodological innovations by the Postal Service will already be apparent in the PRC version, final rule 103 will allow the Postal Service until May 15 of each year to provide a USPS version of the ICRA. Allowing the Postal Service two extra months should

substantially ease the Postal Service's burden in providing the USPS version of the ICRA.

#### B. The Domestic CRA and CSC Reports

The list of items that proposed rule 103 would require the Postal Service to provide includes the PRC version of the domestic Cost and Revenue Analysis (CRA) and the companion Cost Segments and Components (CSC) report. Proposed rule 103 would require the Postal Service to provide at least an unaudited PRC version by March 15 of each year. If an unaudited version were provided, proposed rule 103 would require the Postal Service to provide an audited or finalized PRC version by May 15 of each year. This would allow the Commission enough time to identify and reconcile any discrepancies that there might be between the PRC version of the ICRA and the finalized PRC version of the domestic CRA and CSC.

These companion reports estimate what portion of the Postal Service's accrued costs in its various cost components can be attributed to specific subclasses of domestic mail. The domestic CRA shows how total attributable costs are distributed to the various subclasses of domestic mail and to international mail as a whole. The CSC report displays these costs by cost component. Throughout both reports, costs attributed to international services are presented only in aggregate. To determine the accuracy of the distribution of attributable costs between domestic and international services requires an examination of CRA and CSC reports and their underlying workpapers. The underlying workpapers show the method and procedures by which the Postal Service determines the attributable costs for domestic and international services.

*Commission authority to require production of the domestic CRA and CSC reports.* In its comments, the Postal Service suggests that the Commission does not have the statutory authority to require the production of the domestic CRA, the CSC, or the supporting documentation for these reports, on a specific schedule or in a preliminary form. Its principal argument is that section 401(4) of the PRA gives the Postal Service the power to keep its own system of accounts, and that section 3663 doesn't explicitly override that power. Postal Service Comments at 3-4.

The Postal Service also questions whether the Commission needs a comprehensive domestic CRA to prepare its report on international mail. At page 8 of its comments, it says that "it is open to question whether 39 U.S.C. 3663 was ever intended by

Congress to authorize the Commission, in effect, to serve as a second auditor of the Postal Service's financial data." It states that it expects to provide the Commission with those parts of the domestic CRA and documentation that directly support the development of the ICRA. It also states that it would be willing to supplement such documentation if critical gaps were identified that seriously interfered with the Commission's ability to produce its report by July 1. In any event, the Postal Service asserts, the audited domestic CRA will be completed and available in time to enable the Commission to use it to complete its report on schedule. Accordingly, the Postal Service argues, the rule need not be written to require the production of the domestic CRA at all; rather it need only specify the production of information needed to review the parts of the domestic CRA used to create the ICRA. *Id.* at 7-8.

Several of the commenters disagreed with the Postal Service's narrow view of the Commission's authority under section 3663. United Parcel Service (UPS) argues that the following language of section 3663(b) gives the Commission the authority to determine what information it needs to prepare its report, and to require it by March 15 of each year.

Not later than March 15 of each year, the Postal Service shall provide to the Postal Rate Commission such data as the Commission may require to prepare the report required under subsection (a) of this section. (Emphasis supplied in original omitted here.)

Reply Comments of UPS in response to Commission order no. 1270, filed January, 2000 (UPS Reply Comments) at 4. UPS and Federal Express (FedEx) observe that Congress placed section 3663 in chapter 36 of the PRA, and that Congress has given the Commission authority to promulgate rules that are necessary and proper to carry out the duties that chapter 36 has assigned to the Commission. UPS Reply Comments at 2-5; Reply Comments of FedEx in response to order no. 1270, filed January 10, 2000 (FedEx Reply Comments) at 1-2.

Section 3603 of the PRA provides:

The Postal Rate Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter. Such rules, regulations, procedures and actions shall not be subject to any change or supervision by the Postal Service.

UPS emphasizes judicial precedent that holds that an "agency's data selection

and choice of statistical methods are entitled to great deference" where "sophisticated data evaluations [are] mandated by [a] lengthy and complicated statute." It argues that the PRA is such a statute. UPS Reply Comments at 4. The Commission concludes that the view of the Commission's authority expressed by FedEx and UPS is better supported. The PRA requires the Commission to make sophisticated data evaluations with respect to domestic rates. Congress indicated an awareness of this in drafting section 3663. The language of section 3663(b) obligates the Postal Service to provide the Commission with financial data on individual international services "in sufficient detail" to enable the Commission to analyze them "under the methods determined appropriate by the Commission for analysis of rates for domestic mail." From this it is reasonable to conclude that Congress intended that the Commission make sophisticated evaluations of the Postal Service's financial data on international services similar to those that it makes with respect to financial data on domestic subclasses in evaluating domestic rate requests. As FedEx and UPS note, the Commission has the authority to promulgate rules that are necessary and proper to carry out its chapter 36 responsibilities.

The Postal Service expresses skepticism that Congress intended the Commission to inquire into the accuracy of its financial data on international mail. The Commission concludes that such intent is strongly implied by the language of section 3663. Section 3663(b) requires the Postal Service to provide data in sufficient detail to enable the Commission to analyze, not just to passively report, the costs, revenues, and volumes of each international mail service. [Emphasis on the word analysis omitted here.] It is reasonable to infer that verifying the accuracy of data is a basic part of the analysis contemplated by Congress. FedEx concurs. FedEx Reply Comments at 2-3, n. 2. Indeed, it is hard to imagine what purpose it would serve for Congress to assign the task of preparing the report on international mail to the Commission rather than the Postal Service, if Congress intended that the Commission simply take the Postal Service's international mail data on faith.

As noted, the Postal Service emphasizes that it has the power under 39 U.S.C. 401(4) to keep its own system of accounts and to determine the forms and contents of its business documents. Rule 103 as proposed would not conflict

with this power. Providing these documents to the Commission early enough, and in an edited form that is reliable enough to enable the Commission to perform its chapter 36 duty to analyze and report on international mail, still leaves postal management free to review and refine these documents for its own internal use in whatever form, and to whatever degree, best suits its own internal management objectives. It should be borne in mind that section 401(4) gives the Postal Service the power to keep its own system of accounts and determine what form its business documents will take "except as otherwise provided in this title." Therefore, if an exception to the Postal Service's general section 401(4) powers were thought to be necessary to enable the Commission to obtain the detailed and reliable financial data from the Postal Service that are necessary to prepare its section 3663 report, section 401(4) provides for it.

*The Commission's need for the domestic CRA and CSC reports.* It seems clear that section 3663 intends that the Commission verify the accuracy of the Postal Service's financial data on international mail as part of its reporting responsibility. It is also clear that section 3663(b), together with section 3603, gives the Commission authority to require the documentation necessary to do so. The question remains whether the Commission needs comprehensive domestic CRA and CSC reports to carry out the Commission's duty to analyze and report on the costs, revenues, and volumes of international mail.

The international CRA shows subtotal attributable costs for processing, delivery, domestic transportation, international transportation, settlement, and all other. The subtotal for processing costs reflects the sum of cost segments 2, 3, and 4. Delivery costs reflect the sum of cost segments 6, 7, 8, 9, 10, and 12. Transportation and settlement costs reflect cost segment 14. All other costs reflect the sum of cost segments 1, 11, 13, 15, 16, 17, 18, 19, and 20. The first examination the Commission performs is to compare the sum of the applicable cost segment amounts in the international C report to the subtotal amounts in the ICRA. The Commission can also compare amounts in the C report for mail processing and city carrier costs to the underlying workpapers that the Postal Service provides in the initial submission and evaluate the accuracy of the attributable cost methods used.

As noted, section 3663(b) requires the Commission to analyze the costs, revenues, and volumes for each international mail product or service,

under the methods determined appropriate by the Commission for the analysis of rates for domestic mail. (Emphasis in original omitted here.) The attribution methods that the Commission applies to domestic subclasses differ from those the Postal Service currently prefers most significantly in cost segments 3 and 7. The Commission needs to verify that its attribution methods have been accurately applied by the Postal Service in determining the portion of these segment costs that the Postal Service attributes to specific international services. To do this, the Commission needs to be able to review the workpapers that underlie cost segments 3 and 7 of the domestic CSC. Only they show in detail how the Postal Service has applied the Commission's attribution methods. To analyze the accuracy of the distribution of other segment costs between all domestic services and all international services the Commission requires not only the domestic CRA and CSC reports, but also the underlying workpapers.

The Commission needs complete domestic CRA and CSC reports because they provide control totals for the total of the costs, revenues, and volumes estimated for the various international services in the ICRA. The domestic CSC report presents attributable costs by component for each domestic subclass and for international mail in aggregate. The international CSC equivalent attributes segment costs to specific international mail services. The sum of the costs attributed to specific international services in the international CSC should equal the sum of costs attributed to international mail in the domestic CSC. Similarly, the sum of the revenues and volumes for specific international services presented in the ICRA should equal the aggregate international volumes and revenues presented in the domestic CRA.

There should be little reason to doubt the value of the control totals provided in the domestic CRA and CSC. Unlike the ICRA, the estimation methods and procedures used in the domestic CRA and CSC have been regularly refined under the intense scrutiny of publicly litigated rate cases. Consequently, the domestic CRA and CSC reports provide the most reliable control totals available for the product-specific financial data in the ICRA. If the ICRA totals match the control total, then the Commission is assured that no domestic costs, revenues, and volumes have found their way into the ICRA and that no international costs, revenues, and volumes have been left out of the ICRA. This is the most fundamental check that

the Commission can provide in its report to Congress. Without comprehensive CRA and CSC reports, the Commission cannot provide this assurance.

The Commission also needs a complete domestic CRA to ensure that the treatment of attributable and institutional costs in the ICRA is consistent with their treatment in the domestic CRA. For example, in its FY 1998 ICRA, the Postal Service eliminated costs associated with the "settlement difference" (the difference between accrued settlement costs and imputed settlement costs). For the ICRA to be consistent with the domestic CRA, it would appear that the Postal Service should remove these costs from the total accrued costs in the domestic CRA. The Commission could not assure Congress that the treatment of these costs in the ICRA is consistent with their treatment in the domestic CRA unless the Commission has a comprehensive domestic CRA.

*Requiring an audited domestic CRA and CSC by May 15.* These reports provide detailed statistical estimates of the costs incurred annually by the mail in aggregate and by individual subclasses in particular. They are primarily used to provide the cost basis for pricing and ratemaking. Proposed rule 103 would require the Postal Service to provide PRC versions of the domestic CRA and CSC reports by March 15 of each year, in unaudited form, if necessary. It would require the Postal Service to provide these reports in audited form no later than May 15 of each year. Final rule 103 retains this requirement.

The Postal Service objects to requiring these reports either by a specific date, or in a preliminary form. It argues that because of the complexity of these reports, and the multiple layers of review they undergo, it is unrealistic to require that annual production of these reports could be accelerated to March 15. It warns that requiring its production "at an early stage" risks publication of unreliable numbers. The Postal Service asserts that because the CRA and CSC reports are official documents, postal management's policy prerogatives are infringed if the timing of the reviews and policy clearances required to issue the domestic CRA are modified to meet the needs of the Commission.

The Postal Service observes that the PRC version of the domestic CRA is not an official document of the Postal Service, and therefore is not audited and not endorsed by the Postal Service. Nevertheless, it argues the PRC version is a "variant" of the official CRA.

Therefore, it maintains, requiring production of the PRC version of the domestic CRA by a specific date, or in preliminary form, raises the same objections as if it were the official version. For these reasons, the Postal Service asserts, the Commission should only require that the domestic CRA be provided "within two weeks" of internal presentation to Postal Service management, as the Commission's existing periodic reporting rules require. Postal Service Comments at 6-8.

UPS argues that audited versions of the domestic CRA and CSC reports should be required by March 15. It contends that it should not be difficult to produce audited financial data by March 15—more than five months after the close of the fiscal year. It notes that in the private sector, audited financial data are required within 90 days of the end of the fiscal year. UPS Comments at 11-12. It reminds the Postal Service that the March 15 deadline set in section 3663(b) for providing information necessary to prepare the international mail report was not selected at the Commission's discretion, but is mandated by Congress. UPS Reply Comments at 4.

The Postal Service states that it strongly believes that rules adopted under the authority of section 3663 should interfere as little as practicable with the production and timing of the Postal Service's internal reports, or with its policies on public issuance and disclosure of externally available reports.

Postal Service Comments at 4. The Commission agrees. That is what rule 103 is designed to do.

In section 3663, Congress assigned the Commission the task of analyzing the costs, revenues, and volumes of individual international services, and assuring that they have been estimated by methods that are consistent with the methods that the Commission applies to domestic mail when recommending domestic rates. In fulfilling this mandate, the most fundamental check that the Commission can make is to match control totals from the domestic CRA and CSC with corresponding amounts in the ICRA, to see if any costs, revenues, or volumes have been misallocated between international and domestic mail. To do this, the Commission requires that complete domestic CRA and CSC reports be provided in time to analyze them.

Congress selected the annual July 1 due date for the Commission's reports, and made the judgment that the Postal Service must provide the data necessary to prepare the report by March 15 of each year, to give the Commission adequate time to analyze the data. The

Commission is aware that the CRA is a complex statistical document that requires careful editing of data from a wide variety of databases before it can be relied on. The Commission is also aware that historically the Postal Service has usually not released its audited version of the domestic CRA until a few weeks before, or a few weeks after, May 15. For this reason, rule 103 defers the due date for an audited domestic CRA from March 15 to May 15. Rule 103 allows the Postal Service two additional months to provide a CRA-PRC version beyond the time that section 3663(b) would otherwise require it. This liberal provision should go most of the way toward satisfying the Postal Service's concern that the section 3663 reporting process impinge as little as possible on its internal timetable for generating its official reports.

In its comments, the Postal Service asks the Commission not to specify the time that it is to provide the domestic CRA. Postal Service Comments at 7-8. The Commission followed this approach in 1999 in preparing its first international mail report. On May 5 the Commission requested the domestic CRA and CSC reports without specifying a due date. The Postal Service provided these reports on June 7. There were apparent discrepancies between totals in the CRA provided on June 7 and the ICRA that it had provided earlier. In the brief time remaining to provide a draft report to the Commission, Commission staff determined that these discrepancies apparently were matters of form rather than substance.

If, at that late date, substantive discrepancies had been found in the domestic CRA, the Commission could have faced the same dilemma that it faced with respect to the ICRA, where substantive changes in cost accounting methods were included in a version provided to the Commission on June 7, 1999. As previously described, the Commission staff was unable to evaluate these changes in the remaining available time. Rather than pass judgment on them, it prepared an alternative ICRA-PRC version that incorporated these new costing methods and presented the resulting cost coverages in an appendix to its report, with a disclaimer as to the soundness of the results. Rule 103 is designed to prevent similar problems arising with respect to the finalized domestic CRA. Because it requires that a finalized domestic CRA be provided by May 15, it should provide the Commission with a reasonable opportunity to resolve substantive discrepancies if they appear, and make any necessary revisions to its report.

*Requiring an unaudited domestic CRA and CSC by March 15.* Proposed rule 103 would require the Postal Service to provide the Commission an unaudited or preliminary version of the domestic CRA by March 15. The Commission retains this provision in its final rule 103.

The Postal Service objects to this aspect of rule 103, characterizing it as an "unrealistic" acceleration of the typical production schedule for the CRA. Postal Service Reply Comments at 14. It also considers it unwise, since preliminary data might be unreliable. Postal Service Comments at 7. Yet, it also asserts that

[t]his does not mean that use of data and analysis derived from the domestic CRA Report at preliminary stages corrupts production of the ICRA. For the most part, data and information from the CRA process can be relied upon, and its use in the ICRA is independently evaluated.

Id. The Postal Service recognizes that to satisfy section 3663(b) it must provide a reliable, finalized version of the ICRA by March 15 of each year. Id. at 5. In the comment quoted above, the Postal Service recognizes that assertions that it can provide a reliable ICRA by March 15 imply that the CRA from which the ICRA is derived can be developed to the point that it is basically reliable by that date as well. The Postal Service considers it burdensome to have to complete the basic edits on the CRA that would make it, and the ICRA, available by March 15 of each year. But it should be borne in mind that the need to undertake this burden arises from the deadlines mandated by section 3663, rather than the predilections of the Commission. The Postal Service's recent filing in docket no. R2000-1 suggests that it would not be unduly burdensome to provide a preliminary, but basically reliable version of the CRA by March 15 of each year.

#### C. Additional Descriptive Materials

In its comments, the Office of the Consumer Advocate (OCA) asks that the Commission include in proposed rule 103 a 30-day period for public comment on the adequacy of the information that the Postal Service provides on March 15. The OCA is mindful that the Postal Service considers much of the product-specific cost, revenue, and volume information contained in the ICRA to be commercially sensitive. It argues, however, that descriptions of the processes and methods by which the Postal Service puts together the ICRA and the databases underlying it should not be considered commercially sensitive. Accordingly, it proposes to add a long list of explanations and

documentation to the information items listed in proposed rule 103, and to provide a 30-day period for public comment on the adequacy of this documentation. OCA Comments at 7-8.

The OCA proposes that the list of items that rule 103 would require the Postal Service to provide by March 15 include descriptions of how the Postal Service allocates costs that are shared by domestic and international services to those respective services, and descriptions of how costs that are shared by international services are allocated between specific international services. In addition, the OCA proposes that the Postal Service provide descriptions of the product-specific methods that it uses to estimate the costs of, respectively, Global Package Link, Global Priority Mail, Global Direct Services, Global Parcel Services, and International Customized Mail. Id. at 4-5. It proposes that the Postal Service provide full documentation of the data collection and sampling systems, both domestic and international, that contribute to the ICRA, including training manuals and instructions to data collectors. It asks that the Postal Service be required to describe in detail how reports are generated by these systems, and how these reports are used to estimate the costs, revenues, and volumes of individual international services. The specific information items that are covered by its proposal are listed at pages 4-7 of its comments.

Both UPS and FedEx endorse the OCA's proposal to add detailed descriptions of methods and procedures to the items required by rule 103, and its proposal that there be a 30-day period for public comment. FedEx Reply Comments at 3, UPS Reply Comments at 13-14.

The Postal Service disagrees. It argues that section 3663 does not call for a public documentation exercise, just a cooperative effort between the Postal Service and the Commission. It argues that supervising a public debate over documentation requirements would needlessly tie up the Commission at a time when it is trying to produce the required report. The Postal Service asserts that the OCA's proposal is focused less on the information that the Commission needs to prepare its report than on the information that the lay public might need to accomplish the same task. Postal Service Reply Comments at 2-3.

The OCA's carefully crafted proposal has laudable objectives, but for practical reasons, the Commission has decided against expanding the list of items that the Postal Service must provide by March 15 contained in proposed rule

103. Under rule 103, as proposed and as adopted, the Commission would already receive the documentation of the international mail reports and data collection systems called for by the OCA. In that documentation, the Postal Service historically has included descriptions of any changes that it has made to estimation methods that affect international mail. We trust that this practice will continue.

Documentation of system-wide data sampling systems, such as the In-Office Cost System, the Revenue, Pieces, and Weight system, the Carrier Cost System, and TRACS, is a significant undertaking that up to now has been required only in omnibus rate cases. The Commission considers it unnecessary to require that the Postal Service prepare in-depth documentation of its system-wide financial reports and data systems every year by March 15. Due to the Postal Service's complaints about resource constraints, the Commission has scaled back somewhat its list of information items required by March 15 in order to make the Service's section 3663(b) obligations somewhat less onerous. Requiring in-depth documentation of its domestic data systems by that date is likely to compound the difficulties that the Postal Service describes in providing the ICRA and a preliminary version of the CRA by that date. If, in the brief time that the Commission has after March 15 to prepare its report, the Commission perceives a specific need for fresh documentation of domestic data systems, it will ask the Postal Service for selective supplements of the documentation that it customarily provides in omnibus rate cases.

#### D. Implied Discount for Inbound International Services

FedEx argues that in terms of cost coverages, the compensation that the Postal Service receives for handling and delivering categories of inbound international mail is substantially less than the compensation that it receives for handling and delivering corresponding categories of domestic mail. It argues that these disparities in cost coverage are, in effect, discounts that the Postal Service offers to foreign postal administrations on inbound mail service. It argues that the Postal Service receives reciprocal discounts from foreign postal administrations for delivering mail that they receive from the Postal Service. FedEx argues that these reciprocal discounts are hidden costs of offering outbound service, and serve to reduce the real cost coverage on those services. FedEx notes that this issue was raised in the questions concerning the Commission's first

international mail report that were posed to the Commission by the House Postal Service Subcommittee. See the NPRM in this docket (order no. 1270) at 7.

According to FedEx, accounting for this discount is "the central analytical issue" that the Commission's international mail report should address. FedEx Comments at 5. FedEx argues that the Commission's report should estimate the extent of the implied discount offered on each inbound service and add it to its corresponding outbound service, as though it were an attributable cost of the outbound service. This, FedEx contends, would yield a true picture of the effective cost coverages being earned by the Postal Service's various outbound international services. FedEx Comments at 15-16.

To accurately calculate the implied discount, the Commission would have to have information on inbound mail comparable to the billing determinant information that the Postal Service collects on domestic mail, as well as additional information on the content of inbound mail. For example, if it were assumed that inbound single-piece letters would be charged First-Class single-piece rates if they were domestic mail, it would be necessary to know the volume of those letters by ounce increment, in order to infer a domestic price.

FedEx appears to recognize that such information would be needed to perform the analysis that it advocates. To obtain that information, it proposes to add the following to the information that rule 103 would require by March 15 of each year.

(n) For each inbound mail service and each terminal dues regime, the Postal Service shall provide (i) an analysis, by pieces and weight, of the distribution of such mail among classes of domestic mail, (ii) an estimate of the costs and revenues associated with each such domestic mail class; and (iii) an estimate of the revenue that would have been received if such mail had been posted at domestic postage rates; the Postal Service shall also provide all associated documentation and workpapers.

FedEx Comments at 6. FedEx also recognizes that associating specific inbound services with specific domestic counterparts will be a difficult undertaking. To help the Commission accomplish this task, FedEx proposes adding the following provision to rule 103.

(o) For each outbound mail service for which (i) foreign delivery is not purchased at a market rate available to competitors of the Postal Service and (ii) the Postal Service provides significant services to the foreign

entity providing delivery, the Postal Service shall provide a method of associating with that outbound mail service the costs and revenues of one or more inbound mail services provided the foreign entity; the Postal Service shall also provide all associated documentation and workpapers.

UPS agrees with FedEx that the delivery of inbound mail is inextricably tied to the Postal Service's use of foreign postal administrations to deliver its outbound mail. It argues that any losses incurred on inbound mail should be borne by the corresponding category of outbound mail. UPS Comments at 12-13.

The Postal Service replies that there is no indication in section 3663 or its legislative history to indicate that the purpose of the Commission's international mail report was to account for any alleged discount offered to foreign postal administrations. Postal Service Reply Comments at 4. The Postal Service says that it is a misconception to view the terminal dues rates that it charges for delivering the mail of foreign posts as discounts from the rates charged domestic mail. It emphasizes that delivering the mail of foreign posts is an obligation of membership in the Universal Postal Union (UPU). It argues that in establishing uniform UPU terminal dues rates, the members do not view inbound international mail as analogous to domestic mail, whose rates are typically set by each member post to recover a specific share of the costs of its domestic network. Instead, it argues, inbound international mail has its own unique costs, product features, and service times, which the uniform terminal dues rates reflect.

The Postal Service insists that it could not sell domestic delivery to the various categories of mail from foreign posts as though it were discounted domestic service. It contends the various categories of inbound mail cannot be mapped to particular categories of domestic mail in terms of content, size and weight profiles, mail preparation, or service characteristics. It questions whether such mapping could be done in the future. It comments that it is naive to assume that existing data systems can be modified to provide data that is sufficiently detailed to allow inbound services to be mapped to domestic subclasses. It notes that demand elasticities for international mail are generally much higher than for domestic mail, implying that if the various categories of inbound mail were to be priced as domestic mail, they would generally receive lower markups. Id. at 6-7, 9.

The Postal Service insists that rates for outbound international mail are based entirely on the costs of outbound mail, and are not influenced in any way by the costs or revenues of inbound mail. *Id.* at 8. The Postal Service asserts that a causal connection between outbound rates and inbound costs and revenues would be difficult to demonstrate because many outbound services do not have a corresponding inbound category of mail. It cites International Priority Airmail and International Surface Airlift as examples of outbound mail services that have no inbound counterpart.

Historically, UPU terminal dues for Letters and Cards, and "Autres Objets" (LC/AO) mail have been based on an estimate of the average cost of domestic delivery of foreign-origin mail by the posts of a broad cross-section of members of the UPU, rather than the domestic rates of specific member countries. Although there is little empirical evidence that current terminal dues for LC/AO mail now are based primarily on the rates and net revenues charged for domestic mail of like kind, this situation soon will change. By the year 2001, UPU rates for LC/AO mail between industrialized countries are scheduled to be set as a percentage of the rates charged for corresponding domestic categories. In order to determine what terminal dues to charge in 2001, the Postal Service will soon have to gather data that is sufficiently detailed to map inbound LC/AO mail to corresponding domestic categories. While it appears to be premature to incorporate data requirements in rule 103 designed to make such judgments, meeting such requirements should be more feasible in the future.

## II. Analytical Methods Used in the Report

### A. Accounting Method Applied to International Air Transportation Costs and to the Settlement Difference

The Postal Service changed its method of accounting for international air transportation costs and for settlement expenses between the ICRA-PRC version which it provided to the Commission on March 15, 1999, and the ICRA-USPS version that it provided on June 7, 1999. As explained in appendix F of the Commission's FY 1998 international mail report, accrued international air transportation costs are projections based on the historical level of payments to air carriers. Imputed air transportation costs are calculated by multiplying outbound volumes by unit air transportation charges, based on initial actual air bills.

Sometime after the close of the fiscal year, the Postal Service revises the initial air bills to reflect subsequent corrections. In the ICRA report that the Postal Service provided to the Commission in March 1999, it developed imputed international air transportation costs without the benefit of knowing all the corrections made to the initial air bills. However, at some point in the process of producing the ICRA, the revised actual costs become available. By aggregating the revised actual costs and the imputed costs, and calculating the ratio of revised cost to imputed costs, the Postal Service created an adjustment factor to apply to the international air transportation costs in the ICRA, by service and country grouping.

In the version of the ICRA that the Postal Service provided on March 15, it adjusted imputed attributable international air transportation cost by service to the accrued level. In the June version, it revised international air transportation costs by service to reflect only the actual payment to airlines in FY 1998. Accrued settlement charges are book costs. They are projections based on historical levels of settlement charges. Imputed settlement charges are calculated by multiplying volumes recorded by the Military and International Accounting and Dispatch System (MIDAS) by known settlement charges. Imputed amounts are relied on in the ICRA because there can be a lag of several years before corrections to the imputed amounts are completed. In the ICRA that the Postal Service provided on March 15, the Postal Service treated the difference between actual and accrued settlement expenses as a cost that is incremental to international mail as a whole. In the June 7 version of the ICRA, the Postal Service eliminated the settlement difference cost.

Because there was not enough time for the Commission to adequately evaluate these changes in accounting treatments in its report, the Commission presented alternative financial results under both the old and the new methods. See appendix F to the Commission's FY 1998 international mail report. The NPRM invited public comment on the merits of these changes in accounting methods used by the Postal Service. Order no. 1270 at 13-14.

UPS comments that the explanations of these changes in accounting methods have not been sufficiently clear for it to evaluate their merits. It observes that in principle, the accrual method matches costs with the production of services more accurately than the cash method, citing Financial Accounting Standards Board Statement of Financial

Accounting Concepts No. 1. It argues that without more detailed explanations, there should be a presumption that the accrual method is superior. UPS Comments at 12-13.

The Postal Service replies that the accrual method is less accurate than the cash method with respect to both air transportation and settlement costs, particularly in FY 1998. The Postal Service states that it conducted an analysis in FY 1999 that caused it to adjust accrued air transportation costs. It then says

[t]he effect is that the accrued costs for FY 1999, including the prior year adjustments, dramatically understate the cost consequences of the mail carried during that year. We expect that beginning with FY 2000, it will be reasonable to return to the use of accrued costs for this item.

Postal Service Reply Comments at 12. The Postal Service will be asked to explain in more detail what the nature of the adjustments made during FY 1999 were, and why a change to the accrual method will be reasonable in FY 2000.

With respect to the settlement difference, the Postal Service states that imputed costs will be consistently more accurate than accrued costs. It explains that the long lags before actual charges can be compiled lead to relatively large adjustments in such things as the actual Special Drawing Right conversion rate to be applied. *Id.*

Both the air transportation charge and the settlement charge adjustments appear to represent judgments by the Postal Service that, at least for FY 1999, it should not try to tie actual amounts back to book costs because the book costs are likely to prove to be substantially different from the actual charges when they become available. The Postal Service will be asked to explain whether it will attempt to revise its total accrued costs to conform to the imputed or actual costs for air transportation and settlement charges that it apparently intends to use in its FY 1999 ICRA.

### B. Accounting for International Express Mail Service Imbalance Charges

With respect to inbound international Express Mail Service (EMS), the Commission's FY 1998 international mail report, at 38, comments that "[a]chieving a positive outcome for EMS should not pose a problem as the Postal Service is free to enter bilateral agreements \* \* \* in which rates can be cost based." Referencing this passage, UPS says that it is not clear whether EMS covers its costs. It observes that the charges for domestic delivery of foreign-origin EMS take the form of "imbalance charges" negotiated between country

pairs. It says that its understanding is that imbalance charges are assessed only on the net amount that one country imports from the other, and for that reason, a complete financial picture for EMS requires that outbound and inbound EMS data be combined. UPS Comments at 13–14.

The Postal Service replies that none of its various compensation arrangements for exchanging EMS are accounted for by focusing on net flows between country pairs. Postal Service Reply Comments at 13.

The Commission's interpretation of the Postal Service's response is that even if the Postal Service's payments for domestic delivery of EMS are based on net amounts, it carries gross outbound and inbound numbers on its books, as it does for other international mail classes. The Commission will verify with the Postal Service whether this understanding is correct.

### *III. Contents of the International Mail Report*

The Commission's initial report on international mail under section 3663 was issued on July 1, 1999. The Commission's NPRM did not propose any rules that would apply to the content of its report. But, recognizing that the content of the report has a bearing on the data that is considered necessary to prepare it, the Commission invited comments on the contents of its report as well.

#### *A. Reporting Financial Data Individually for "Initiatives"*

UPS argues that the report should include volumes, revenues, costs, and cost coverages for each individual international service, including the so-called "initiatives" that the Postal Service considers especially sensitive, and that these estimates should be disclosed to the public. Otherwise, it argues, there is no way for the public to judge the fairness of the rates for individual international services. UPS Reply Comments at 9–12.

The international "initiatives" are Global Priority Mail, Global Package Link, Direct Entry, and International Customized Mail. UPS states that the Commission's report "aggregates" volume, cost, and revenue information for these services, citing page 34 of the report, and urges that the report display data on these services individually. UPS Reply Comments at 9. The Commission's report to Congress, at page 34, and at page 9, displays data for these services individually. UPS' comments may have been based on the redacted version of the report that it received in response to the request that

it filed under the Freedom of Information Act (FOIA).

#### *B. Reporting Various Unit Measures as Benchmarks*

FedEx proposes that the Commission's international mail report be extended to include unit measures of the financial aspects of international mail that can be compared to known, standard unit measures from other fields. For example, it proposes that the report compare the unit cost of air transportation for LC and AO mail (other than International Surface Airlift) to the air transportation rates established by the Department of Transportation. It offers, as another example, comparing the "unit cost of foreign post delivery, by terminal dues regime, with the terminal dues set by the UPU." FedEx Comments at 18–19. The Commission agrees that standard unit measures of financial performance drawn from other sectors might usefully be compared to those of international mail. It will consider presenting such comparisons in future reports.

#### *C. Reporting Inbound "discounts" as Outbound Costs*

As previously noted, FedEx argues that the Commission's report should combine costs, revenues, and volumes for inbound services with those of their associated outbound services to display joint cost coverages. It also argues that the Commission's report should treat the discount offered on each individual inbound service as a cost of the associated outbound service. FedEx Comments at 8. UPS generally agrees. UPS Reply Comments at 12–13. The Postal Service replies that terminal dues rates cannot be viewed as discounts from the rates that inbound mail would be charged if it were domestic mail. Postal Service Reply Comments at 4–11.

In its initial international mail report, the Commission presented estimates of the costs, revenues, and volumes of inbound and outbound international services combined, where it had a reasonable basis for mapping a given inbound service to an analogous outbound service. It intends to make a similar presentation in future reports.

### *IV. Public Disclosure Procedures*

The Commission's NPRM did not focus on the issue of public disclosure. The Commission, nevertheless, thought that it would be useful to invite comments on the procedures that the Commission should employ to determine what portions of its international mail report or supporting documents should not be publicly disclosed, what criteria or standards

should govern that determination, what categories of commercial information meet those standards, and the basis for that belief. Order No. 1270 at 14. A number of proposals were received in response.

UPS proposed that the Postal Service accompany the information that it provides on March 15 of each year with an indication of the portions that it believes are too commercially sensitive to be publicly disclosed. The public would be given 30 days to respond to the Postal Service claims, and the Postal Service would have 30 days to reply. The Commission would then resolve any public disclosure issues in its international mail report, and disclose the information that it concludes should be made public. UPS Comments at 10. Similarly, FedEx proposes that rule 103 require the Postal Service to accompany the information that it submits on March 15 of each year with an indication of the information that, in its judgment, would qualify for non-disclosure under alternative legal standards. FedEx proposes that the Commission accompany its section 3663 report with appendices showing what information the Commission concludes is exempt from public disclosure under those same standards. It implies that these appendices would provide Congress with detailed guidance to aid it in resolving the disclosure issue. FedEx Comments at 17–18.

The Postal Service emphasizes that in docket no. IM99–1, the Commission declined requests to create a special procedure for obtaining public access to information provided under the section 3663 reporting process. In that docket, the Postal Service notes, the Commission concluded that Congress intended public disclosure of materials provided under section 3663 to be governed by existing public disclosure laws and policies. Postal Service Comments at 18.

The Commission continues to believe that Congress did not intend that section 3663 override existing information disclosure laws and policies, or the procedures that they provide. Accordingly, existing disclosure procedures should govern disclosure issues arising under section 3663. These are essentially the procedures that the FOIA provides. See docket no. IM99–1, Order Denying UPS Motion to Provide Public Access to International Mail Data, issued May 21, 1999, at 4. Consistent with these conclusions, the Commission has not incorporated special public disclosure procedures in final rule 103.

The feasibility of these proposals warrant comment as well. The

Commission recognizes that requiring annual, comprehensive disclosure evaluations could accelerate resolution of disclosure issues, especially if it is expected that blanket disclosure requests will be routinely lodged for these data. But these proposals would require that disclosure evaluations be performed during the same limited periods that are available to the Postal Service to compile and edit these data, and to the Commission to substantively evaluate them. It is a formidable task to apply subjective legal disclosure standards in a consistent manner, cell by cell, to thousands of pages of hardcopy spreadsheets and thousands more of electronic spreadsheets, as disclosure law arguably requires. Substantial time and resource constraints make it difficult to undertake both very different kinds of evaluations simultaneously.

#### V. Public Disclosure Standards

Proposed rule 103 refers to a list of reports relevant to international mail that the Postal Service is required to provide by March 15 of each year. It then states that

[i]nformation contained in these reports that is considered to be commercially sensitive should be identified as such, and will not be publicly disclosed except as required by applicable law.

The NPRM invited comments on the legal standard that should govern the determination of what information should be considered commercially sensitive. Order no. 1270 at 14.

Section 410(c)(2) of title 39 authorizes the Postal Service to withhold commercial information that would not be disclosed "under good business practice." In the NPRM, the Commission summarized earlier orders in which the Commission concludes, based on several Federal court precedents, that section 410(c)(2) is a statutory withholding provision that is exempt from the disclosure requirements of the FOIA under exemption 3 of that Act. Order no. 1270 at 10. Consequently, the Commission concluded, the stricter standard that courts have applied to determine whether commercial information is exempt under exemption 4 of the FOIA does not apply to the commercial records of the Postal Service, at least in the section 3663 context. Federal courts generally require a showing that disclosure is likely to cause substantial competitive harm before they will authorize withholding of agency records under exemption 4.

#### A. Standard Proposed by UPS

UPS proposes that rule 103 incorporate the following standard

The entire report and all of the information used to prepare the report shall be made available to the public when the report is issued, unless (1) such disclosure will result in specific identifiable and serious injury to the Postal Service, and (2) the interest of the public in full disclosure is outweighed by such injury.

UPS Comments at 9.

UPS argues that in order to accomplish what it perceives to be the Congressional purpose underlying section 3663, the burden required to justify withholding information under FOIA exemption 4, and in civil litigation concerning trade secrets, is a more appropriate withholding criterion to apply to information provided under section 3663. UPS further argues that the public interest is especially strong in obtaining information about the commercial activities of the Federal government, making the appropriate burden even greater. UPS contends that the language that it proposes to add to rule 103 reflects the appropriate burden that should be required to justify withholding information provided to the Commission under section 3663. UPS appears to argue that the applicability of this balancing analysis is supported, at least indirectly, by the opinion in *National Western Life Insurance Co. v. United States*, 512 F. Supp. 454 (N.D. Tex. 1980). UPS Comments at 2-9.

#### B. Standards Proposed by FedEx

FedEx proposes that rule 103 incorporate the following language

Information contained in these reports that is considered to be commercially sensitive under (i) the standard set out in 39 U.S.C. 410(c) of the Postal Reorganization Act or (ii) the standard of public disclosure applied by the Commission in public hearings conducted under the Administrative Procedure Act should be identified as such, and will not be publicly disclosed except as required by applicable law.

FedEx Comments at 18. FedEx argues that the Congressional purpose underlying section 3663 was to protect competitors and mailers from unfair international mail practices by the Postal Service, and that public disclosure is one of the remedies most commonly used by Congress. While the "good business practice" withholding standard of section 410(c)(2) may apply to disclosure requests made by the public, it argues, Congress is not subject to that withholding provision.

FedEx urges that in its international mail report, the Commission identify information that it considers

commercially sensitive under alternative withholding standards. One would be the "good business practice" standard applicable to disclosure requests made by the public. The other would be the stricter standard applicable in the Commission's formal rate hearings (essentially the "substantial competitive harm" standard applied in FOIA cases interpreting exemption 4). This, FedEx suggests, would give Congress guidance as to what information to disclose if it concludes that the latter withholding standard is more appropriate for information provided under section 3663. Id. at 17-18.

#### C. Standard Proposed by Reporters Committee

In its comments, at 1-2, the Reporters Committee on Freedom of the Press (Reporters Committee), proposes that the following sentence be eliminated from proposed rule 103.

Information contained in these reports that is considered to be commercially sensitive should be identified as such, and will not be publicly disclosed except as required by applicable law.

The Reporters Committee interprets this language as embracing a presumption against disclosure that assumes that the withholding standard in section 410(c)(2) is applicable to section 3663 information. It argues that the section 410(c)(2) standard does not apply, and that the above-quoted language should be deleted from rule 103.

The Reporters Committee contends that the section 410(c)(2) standard should not apply to section 3663 information because it is not a statutory withholding provision that is exempt from the FOIA disclosure requirements under exemption 3. To bring a statutory withholding provision under exemption 3, the provision must require that matter be withheld in a manner that leaves the agency "no discretion on the issue" [5 U.S.C. 552(b)(3)(A)] or "establishes particular criteria for withholding or refers to particular types of matters to be withheld" [5 U.S.C. 552(b)(3)(B)]. The Reporters Committee argues that section 410(c)(2) would not qualify under either part A or part B, under the holding in *Church of Scientology of California v. United States Postal Service*, 633 F.2d 1327 (9th Cir. 1980).

Section 410(c)(6) allows the Postal Service to withhold "investigatory files compiled for law enforcement purposes." The court in *Church of Scientology* rejected the Postal Service's argument that section 410(c)(6) qualifies as exempt from FOIA under part B. It held that section 410(c)(6) did not

display a clear Congressional intent that all of the Postal Service's investigatory files be exempt from FOIA. The court further held that section 410(c)(6) impermissibly allows the Postal Service, rather than Congress, to decide what kind of investigatory files would be hazardous to disclose.

The Reporters Committee contends that by authorizing the Postal Service to withhold commercial information that would not be disclosed under "good business practice," section 410(c)(2) exhibits the same infirmities that the *Church of Scientology* court identified in section 410(c)(6). Because section 410(c)(2) should not qualify as an exemption 3 statute, it argues, the withholding criteria of exemption 4 should apply to section 3663 information.

In its reply comments, the Postal Service argues that the Commission has correctly concluded that FOIA procedures should govern requests for section 3663 information, and that under those procedures, section 410(c)(2) becomes the operable disclosure standard. It points out that those who object to applying the "good business practice" standard of section 410(c)(2) to section 3663 information do not attempt to distinguish the two Federal court precedents that expressly hold that section 410(c)(2) qualifies as an exemption 3 statute, or acknowledge that the Commission has followed these precedents in denying access to the same type of information and records covered by rule 103. See Order no. 1261 at 3-7, citing *Weres Corporation v. United States Postal Service*, C.A. No. 95-1984, at 3-5 (D.D.C. 1996) (unpublished memorandum opinion); and *National Western Life*, 512 F.Supp. 454 at 458-59. The Postal Service argues that the holding in *Church of Scientology* is of little relevance because it interprets section 410(c)(6) rather than section 410(c)(2). It argues that the result turns on the fact that after section 410(c)(6) was adopted, Congress revealed its hostility to broad exemptions for investigatory files by amending and narrowing an almost identical provision authorizing agencies in general to withhold investigatory files (the original version of FOIA exemption 7).

When it sought comments on the disclosure standards that should apply to section 3663 information, the Commission anticipated that comments would focus primarily on interpretations of the "good business practice" standard of section 410(c)(2). The comments appear to assume that the withholding standard to be applied is a matter of Commission discretion.

Consequently, the comments focus on alternative withholding standards that commenters propose.

The Commission acknowledges that in *Church of Scientology*, the general criteria that the Court articulated for determining whether a statute qualifies as exempt from the FOIA under 5 U.S.C. 552(b)(3)(B) differ somewhat from the criteria applied in *Weres* and *Western Life*, which makes the weight of their authority somewhat less clear. Nonetheless, the Commission concurs in the observations of the Postal Service that existing Federal court precedents holding that section 410(c)(2) qualifies as an exemption 3 withholding statute are controlling, and that the "good business practice" standard applies to section 3663 information. Accordingly, the Commission will continue to apply that standard in determining whether specific section 3663 information should be disclosed.

For the reasons discussed above, the Commission hereby adopts new 39 CFR 3001.103, as set forth in the attachment to this order. [The material in the attachment appears in the **Federal Register** following the preamble.]

**Ordering paragraphs.** Ordering paragraph no. 1 states that the Commission adopts the provision set out in the attachment as final rule 39 CFR 3001.103. Ordering paragraph no. 2 states that this rule is effective upon publication in the **Federal Register**. Ordering paragraph no. 3 states that the Secretary shall cause this order to be published in the **Federal Register**. [Order 1285 (signed by Commission Secretary Margaret P. Crenshaw) was issued by the Commission on February 15, 2000.]

#### List of Subjects in 39 CFR Part 3001

Administrative practice and procedure; Postal Service.

For the reasons stated in the preamble, the Postal Rate Commission amends 39 CFR part 3001 as follows:

#### PART 3001—RULES OF PRACTICE AND PROCEDURE

The authority citation for part 3001 is revised to read as follows:

**Authority:** 39 U.S.C. 404(b); 3603, 3622-24, 3661, 3662, 3663.

2. Add § 3001.103 to subpart G to read as follows:

#### § 3001.103 Filing of reports required by 39 U.S.C. 3663(b).

Each report listed in this section shall be filed with the Secretary of the Commission on or before March 15th of each year unless a later date is specified, and shall cover the most recent full

fiscal year. Information contained in these reports that is considered to be commercially sensitive should be identified as such, and will not be publicly disclosed except as required by applicable law. Specific sources cited in this section should be understood to include any successor or substituted source.

(a) The International Cost and Revenue Analysis—PRC Version.

(b) The International Cost and Revenue Analysis—USPS Version, by May 15.

(c) The Cost and Revenue Analysis Report—PRC Version. If an unaudited version is provided on March 15, provide an audited version no later than May 15. The audited version shall include a statement describing all adjustments that affect international mail.

(d) The Cost Segments and Components Report—PRC Version. If an unaudited version is provided on March 15, provide an audited version no later than May 15. The audited version shall include a statement describing all adjustments that affect international mail.

(e) Documentation and workpapers for the ICRA, including those related to:

- (1) Terminal dues.
- (2) Air conveyance dues.
- (3) Transit charges.
- (4) Imbalance charges.
- (5) Inward land charges.
- (6) Description of cost allocation procedures.

(7) Identification of costs that are exclusive to international mail.

(8) The cost of joint ventures with other postal administrations.

(9) International billing determinants.

(10) The data for Direct Entry separated between inbound and outbound as in the Postal Service's response to Item 1 of order no. 1246.

(11) The attributable costs for ValuePost/Canada developed in accordance with the procedure described in the Postal Service's response to Item 2 of order no. 1251, or any alternative procedure deemed appropriate as a basis for setting the rates for ValuePost/Canada. Costs for ValuePost/Canada should be separated between publications and all other printed matter.

(12) Revenues and volumes for Value Post/Canada separated between publications and all other printed matter.

(f) Handbooks pertaining to the collection of volume and revenue data (MIDAS, SIRVO, SIRVI, Other) if they were revised or replaced since they were last submitted.

(g) International CRA manual input, A, B, C, and factor reports on a CD-ROM.

(h) A hard copy of the International CRA manual input and the C report International CRA manual input, A, B, C, and factor reports on a CD-ROM.

(i) Cost Segment 3 CRA Worksheets and all supporting files, including the MODS-Based Costing Studies—PRC Version. Include all databases, SAS and other programs, and output worksheets.

(j) Cost Segment 7 CRA Worksheets and all supporting files.

(k) The number of weighted tallies by international service separately for clerks and mailhandlers, and for city delivery carriers in-office; clerk and mailhandler tallies should be further separated for mail processing, window service, and all other.

(l) Coefficients of variation for:

(1) IOCS clerk and mailhandler tallies by mail processing, window service, and all other.

(2) IOCS city delivery carriers in-office.

(3) TRACS for purchased transportation by international, air, railroad, and other.

(4) Outbound volume by international service.

(5) Inbound volume by international service.

(m) The percentage of household and the percentage of non-household mail for each outbound mail service.

(n) The percentage of single-piece mail and bulk mail for each outbound service.

Dated: February 18, 2000.

**Cyril J. Pittack,**

*Acting Secretary.*

[FR Doc. 00-4427 Filed 2-24-00; 8:45 am]

**BILLING CODE 7715-01-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[GA51-200011a; FRL-6541-5]

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Georgia

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on September 15, 1998, to implement and enforce the Emissions

Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

**DATES:** This direct final rule is effective on April 25, 2000, without further notice, unless EPA receives adverse comment by March 27, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** You should address comments on this action to Scott Martin, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; and at the Georgia Department of Natural Resources, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

**FOR FURTHER INFORMATION CONTACT:** Scott Martin at (404) 562-9036 or Scott Davis at (404) 562-9127.

#### SUPPLEMENTARY INFORMATION:

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#### I. What Action Is Being Taken by EPA Today?

We are approving the Georgia State Plan, as submitted on September 15, 1998, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348-48391, September 15, 1997, 40 CFR part 60, subpart Ce (Emission Guidelines and Compliance Times for HMIWIs) and subpart Ec (Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996)). The Georgia DNR developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act as amended in 1990

(the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective April 25, 2000, unless by March 27, 2000, adverse or critical comments are received. If we receive such comments, this rule will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective April 25, 2000.

#### II. The HMIWI State Plan Requirement

##### *What Is a HMIWI State Plan?*

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

##### *Why Are We Requiring Georgia To Submit a HMIWI State Plan?*

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

##### *Why Do We Need To Regulate Air Emissions From HMIWIs?*

The State Plan establishes control requirements which reduce the