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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206-AJ77

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule, with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to revise the final regulations issued March 14, 2000, implementing the child care subsidy program legislation. We are issuing interim regulations because Congress made permanent the law authorizing agencies in the executive branch of the Federal Government to assist lower income employees with their child care costs, thus making child care more affordable for those employees. OPM also is issuing these revisions as part of a broader review of OPM's regulations to make the regulations more readable.

DATES: The regulations will become effective March 24, 2003, and comments must be received on or before May 23, 2003.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, 1900 E St., NW., Room 7315, Washington, DC 20415, Attn. Bonnie Storm. Comments may also be submitted by email to bstorm@opm.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie Storm by telephone at (202) 606-1313; by fax (202) 606-2091; or by email at bstorm@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is issuing interim regulations to revise the rules included in 5 CFR part 792. Congress enacted Public Law 106-58, section 643, on September 29, 1999,

which allowed executive agencies to use appropriated funds to assist their lower income Federal employees with the costs of child care. The authority was first established as a pilot program effective from March 14, 2000, until September 30, 2001.

OPM issued regulations to implement the authority, and they were published in the **Federal Register** on March 14, 2000. The authority for the child care subsidy program was made permanent on November 12, 2001, by § 630, Public Law 107-67, the 2001 Treasury and General Government Appropriations Act. These interim regulations address the permanency of this legislation by deleting irrelevant dates, changing the Public Law number, and deleting references to the law as new (§ 792.201; § 792.202; § 792.204; § 792.209; § 792.214). Additionally, the law now authorizes advance payments to child care providers under certain circumstances as described in § 792.231. Revisions make the regulations easier to understand by substituting the words "child care subsidy" for "tuition assistance" to avoid any confusion associated with educational programs versus custodial care programs.

The regulations clarify that agencies must use child care providers that meet State and local licensing standards, and that employees are free to choose among both accredited and non-accredited providers in order to qualify. OPM wants to ensure that Federal employees have the widest possible choice in child care providers by making clear that all State and locally licensed or regulated child care providers, meaning those subject to the State and local standards of safety and care for children, qualify under the program.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary for agencies to budget for and implement a child care subsidy program in FY2003.

The interim regulations are amended as follows:

Section 792.201—(interim § 792.200) Overseas locations: During the pilot program from March 14, 2000, to September 30, 2001, agencies asked OPM to address implementation of this

legislation in overseas locations and the revisions clarify that the legislation applies to overseas locations.

Section 792.201 and Sec. 792.218—(interim § 792.200 and § 792.216) Eligible programs: The revisions include a change in policy that the legislation applies to daytime summer programs and continues to apply to full-time and part-time care, including before and after school programs.

Section 792.203—(interim § 792.202) Notification to Congress: The revisions clarify that notification to Congress is an annual obligation.

Section 792.205—(interim § 792.204) Data collection: The revisions state that OPM will collect data annually for a report the agencies can use.

Section 792.206—(no interim section) Benefits to the agency: This section has been removed from the regulations and is included in OPM's child care subsidy program guidance.

Section 792.207—(interim § 792.205) Use of funds: The revisions clarify that the agencies may use appropriated funds ordinarily used for salaries as well as funds for expenses.

Section 792.212—(interim § 792.210) Definition of civilian employee: The revisions clarify that private contractors are not eligible for the child care subsidy program.

Section 792.214—(interim § 792.212) Definition of contractor: The revisions make the definition more readable by removing redundancies.

Section 792.217—(interim § 792.215) Definition of a child with a disability: The revisions make the definition more readable.

Section 792.221—(no interim section) The process for helping lower income employees with child care subsidy: We removed this section from the regulations and included it in OPM's child care subsidy program guidance.

Section 792.223—(interim § 792.220) Are there any conditions which the child care provider must meet in order to participate in this program: Has been revised to rename the section for clarity purposes to "What are the requirements that child care providers must meet in order to participate in this program?"

Revisions also clarify that overseas agencies do not have to be state licensed and/or regulated and that agencies must not restrict the use of funds to apply to accredited child care providers only.

Section 792.225—(interim § 792.222) Definition of lower income Federal

employee: The revisions make the definition more readable by deleting information that appears instead in the "Guide for Implementing Child Care Legislation."

Section 792.227—(interim § 792.224)

Payments to employees: Agencies requested that OPM address the option of paying the child care subsidy directly to employees rather than the child care providers in special situations, and the revisions address that issue.

Section 792.230—(interim § 792.227)

Duration: The revisions clarify that the child care subsidy program will be in effect as long as the agency has a program in addition to the conditions previously listed.

Section 792.232—(interim § 792.229)

List of restrictions: The revisions include a sample list of restrictions agencies may place on the program that are in line with restrictions the agencies actually applied during the pilot phase. They also clarify that agencies must not restrict the use of funds to apply to accredited child care providers only.

Section 792.234—(interim § 792.231)

Advance payments: The permanent legislation includes a provision for advance payments. The revisions address the conditions under which agencies may make advance payments.

Section 792.235—(no interim section)

Disbursement and use of funds oversight responsibility: We removed this section from the regulations because the information is already stated in interim § 792.204.

These revisions make the regulations easier to understand by substituting the words "agency" and "agencies" for pronouns denoting "agency".

Section 792.203—Notifications: The revisions substitute "agencies" and "agency" for "we."

Section 792.228—Disbursements: The revisions substitute "agency" for "we."

Section 792.232—Restrictions: The revisions substitute "agency" for "we."

Section 792.233—Physical space: The revisions substitute "agency" for "we."

The interim changes will result in the following number order revisions:

Revised/Interim section no.	Former section no.
792.200	792.201
792.201	792.202
792.202	792.203
792.203	792.204
792.204	792.205
792.205	792.207
792.206	792.208
792.207	792.209
792.208	792.210
792.209	792.211
792.210	792.212
792.211	792.213

Revised/Interim section no.	Former section no.
792.212	792.214
792.213	792.215
792.214	792.216
792.215	792.217
792.216	792.218
792.217	792.219
792.218	792.220
792.219	792.222
792.220	792.223
792.221	792.224
792.222	792.225
792.223	792.226
792.224	792.227
792.225	792.228
792.226	792.229
792.227	792.230
792.228	792.231
792.229	792.232
792.230	792.233
792.231	792.234

Executive Order 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Lists of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM is amending 5 CFR part 792 as follows:

PART 792—AGENCY USE OF APPROPRIATED FUNDS FOR CHILD CARE COSTS FOR LOWER INCOME EMPLOYEES

1. The authority citation for part 792 continues to read as follows:

Authority: Sec. 201 of Pub. L. 91-616; 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Services Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S.C. 290 ee-1); sec. 643, Pub. L. 106-58, 113 Stat. 477; sec. 630, Pub. L. 107-67.

2. Subpart B is revised to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What is the Child Care Subsidy Program Legislation and to Whom Does It Apply?

Sec.

- 792.200 What are the benefits of the child care subsidy program law?
- 792.201 What is the purpose of the child care subsidy program law?
- 792.202 Do agencies have any notification responsibilities before initiating a child care subsidy program and when may agencies obligate funds for the program?
- 792.203 What materials are available to assist agencies with the process of establishing a child care subsidy program?
- 792.204 Are there any special reporting and oversight requirements related to the child care subsidy program law?
- 792.205 Which agency funds may be used for the purpose of child care the subsidy program?
- 792.206 Are agencies required to participate in this program?
- 792.207 When does the child care subsidy program law become effective and how may agencies take advantage of this law?
- 792.208 What is the definition of *executive agency*?
- 792.209 What is the definition of child care subsidy program?
- 792.210 What is the definition of *civilian employee*?
- 792.211 What is the definition of a *Federally sponsored child care center*?
- 792.212 What is the definition of a *child care contractor*?
- 792.213 What is the definition of a *child* for this purpose of this subpart?
- 792.214 Which children are eligible for this subsidy?
- 792.215 What is the definition of a *child with disabilities*?
- 792.216 Are Federal employees with children who are enrolled in summer programs and part-time programs eligible for the child care subsidy program?
- 792.217 Are part-time Federal employees eligible for the child care subsidy program?
- 792.218 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
- 792.219 Are agencies required to negotiate with their Federal labor organizations concerning the implementation of this law?
- 792.220 What are the requirements that child care providers must meet in order to participate in this program?
- 792.221 Is there a statutory cap on the amount or the percentage of child care costs that will be subsidized?
- 792.222 What is the definition of a *lower income Federal employee* and how is the amount of the child care subsidy determined?
- 792.223 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
- 792.224 Are child care subsidies paid to the Federal employee using the child care?
- 792.225 May an agency disburse funds to an organization that administers the child care subsidy program prior to the time the employee receives the child care services?
- 792.226 How may an agency disburse funds to a Federally sponsored child care center in a multi-tenant building?

- 792.227 How long will the child care subsidy program be in effect for a Federal employee?
- 792.228 May these funds be used for children of Federal employees who are already enrolled in child care?
- 792.229 May an agency place restrictions or requirements on the use of these funds, and may the agency restrict the disbursement of such funds to only one type of care or to one location?
- 792.230 May an agency use appropriated funds to improve the physical space of the family child care homes or child care centers?
- 792.231 Is an agency permitted to make advance child care subsidy payments for an individual Federal employee?

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the Child Care Subsidy Program Legislation and to Whom Does It Apply?

§ 792.200 What are the benefits of the child care subsidy program law?

Sec. 630 of Public Law 107–67 permits executive agencies to use appropriated funds to improve the affordability of child care for lower income Federal employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care centers, non-Federal child care centers, and in family child care homes for both full-time and part-time programs such as before and after school programs and daytime summer programs.

§ 792.201 What is the purpose of the child care subsidy program law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.202 Do agencies have any notification responsibilities before initiating a child care subsidy program and when may agencies obligate funds for the program?

An agency intending to initiate a child care subsidy program must provide notice to the House Subcommittee on Treasury, Postal Service and General Government Appropriations; to the Senate Subcommittee on Treasury and General Government Appropriations; and to its appropriations subcommittees prior to the obligation of funds. The agency must also notify OPM of its intention. The agency must give notice to these Congressional committees and OPM annually, and funds may be obligated immediately after the agency has made these notifications.

§ 792.203 What materials are available to assist agencies with the process of establishing a child care subsidy program?

OPM has developed guidance that contains samples of memoranda of understanding, marketing tools, child care subsidy program applications, and models for determining subsidy program eligibility. These materials are found in the “Guide for Implementing Child Care Legislation—Public Law 107–67, Sec. 630.” The Guide is available on OPM’s Web site, <http://www.opm.gov/wrkfam>. Agencies may also obtain a copy by writing to OPM at U.S. Office of Personnel Management, Office of Work/Life Programs, 1900 E St., NW., Washington, DC 20415.

§ 792.204 Are there any special reporting and oversight requirements related to the child care subsidy program law?

Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM. OPM will provide agencies the mandatory reporting form for this purpose. OPM also will produce an annual report for use by the agencies.

§ 792.205 Which agency funds may be used for the purpose of the child care subsidy program?

Agencies are permitted to use appropriated funds, including revolving funds, that are otherwise available to them for salaries and expenses.

§ 792.206 Are agencies required to participate in this program?

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.205.

§ 792.207 When does the child care subsidy program law become effective and how may agencies take advantage of this law?

This authority was made permanent on November 12, 2001. Agencies may now offer child care subsidy programs to their lower income Federal employees to help them reduce their child care costs.

§ 792.208 What is the definition of executive agency?

The term *executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.209 What is the definition of child care subsidy program?

The term *child care subsidy program*, for the purposes of this subpart, means the program that results from the

expenditure of agency funds to assist lower income Federal employees with child care costs, including such activities as: Determining which employees receive a subsidy and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee use of the program.

§ 792.210 What is the definition of civilian employee?

The term *civilian employee*, for the purposes of this subpart, means all appointive positions in an executive agency (5 U.S.C. 105). It does not refer to private contractors hired by the agencies.

§ 792.211 What is the definition of a Federally sponsored child care center?

The term *Federally sponsored child care center*, for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal Government.

§ 792.212 What is the definition of a child care contractor?

Section 630 of Public Law 107–67 provides that child care services provided by contract are encompassed by this new legislation. The term *child care contractor* applies to an organization or individual providing child care services for which Federal families are eligible. These entities are commonly referred to as “child care providers” in the child care industry and they provide services under contract in center-based child care and family child care homes.

§ 792.213 What is the definition of a child for the purposes of this subpart?

For the purposes of this subpart, a *child* is considered to be:

- (a) A biological child who lives with the Federal employee;
- (b) An adopted child;
- (c) A stepchild;
- (d) A foster child;
- (e) A child for whom a judicial determination of support has been obtained; or
- (f) A child to whose support the Federal employee, who is a parent or legal guardian, makes regular and substantial contributions.

§ 792.214 Which children are eligible for this subsidy?

The law covers the children of Federal employees, excluding contract employees, from birth through age 13 and disabled children through age 18.

§ 792.215 What is the definition of a child with disabilities?

For the purpose of this subpart, a *child with disabilities* is defined as one who is unable to care for himself or herself based on a physical or mental incapacity as determined by a physician or licensed or certified psychologist.

§ 792.216 Are Federal employees with children who are enrolled in summer programs and part-time programs eligible for the child care subsidy program?

Federal employees with children (birth through age 13) and children with disabilities (children through age 18) who are enrolled in daytime summer programs and part-time programs such as before and after school programs are eligible for the child care subsidy program. The summer and part-time programs must be licensed and/or regulated.

§ 792.217 Are part-time Federal employees eligible for the child care subsidy program?

Federal employees who work part-time are eligible for the child care subsidy program.

§ 792.218 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

The bill includes non-Federal center-based child care as well as care in family child care homes, as long as the providers are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.219 Are agencies required to negotiate with their Federal labor organizations concerning the implementation of this law?

Agencies are reminded of their obligation under 5 U.S.C. 7117 to negotiate or consult, as appropriate, with the exclusive representatives of their employees on the implementation of the regulations in this subpart.

§ 792.220 What are the requirements that child care providers must meet in order to participate in this program?

The provider, whether center-based or family child care, must be licensed and/or regulated by the State and, where applicable, by local authorities where the child care service is delivered. Outside of the United States, agencies may adopt or create criteria to ensure a child care center or family child care home is safe. Agencies must not restrict the use of funds to apply to accredited child care providers only.

§ 792.221 Is there a statutory cap on the amount or the percentage of child care costs that will be subsidized?

The law does not specify a cap on the amount or percentage of child care subsidy that may be subsidized.

§ 792.222 What is the definition of a lower income Federal employee and how is the amount of the child care subsidy determined?

Each agency decides who qualifies as a *lower income Federal employee* within that agency. OPM has provided guidance for determining eligibility in the "Guide for Implementing Child Care Legislation—Public Law 107-67, Sec. 630." This publication is available on OPM's Web site, <http://www.opm.gov/wrkfam>.

§ 792.223 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or subsidy program criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the subsidy program eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.224 Are child care subsidies paid to the Federal employee using the child care?

Agencies must pay the child care provider directly, unless one of the following exceptions applies:

- (a) If an agency chooses to have an organization administer its program (see § 792.223), the organization pays the child care provider;
- (b) For overseas locations, the agency may choose to pay the employee if the provider deals only in foreign currency; or
- (c) In unique circumstances, an agency may obtain written permission from OPM to do so.

§ 792.225 May an agency disburse funds to an organization that administers the child care subsidy program prior to the time the employee receives the child care services?

The agency may disburse funds to an organization that administers the child care subsidy program in one lump sum. The organization will be responsible for tracking the funds and providing the agency with regular reports. An agency contract should specify that any unexpended funds shall be returned to

the agency after the contract is completed.

§ 792.226 How may an agency disburse funds to a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies may be pooled together for the benefit of the employees qualified for the child care subsidy program.

§ 792.227 How long will the child care subsidy program be in effect for a Federal employee?

The child care subsidy program, in the form of a reduced child care cost rate, shall be in effect from the time the agency makes a decision for a particular Federal employee and the child is enrolled in the program until one of the following occurs:

- (a) The child is no longer enrolled in the program;
- (b) The employee no longer qualifies as a "lower income employee"; or
- (c) The agency no longer has a child care subsidy program.

§ 792.228 May these funds be used for children of Federal employees who are already enrolled in child care?

The funds may be used for children currently enrolled in child care as long as their families meet the child care subsidy program eligibility requirements established by the agency.

§ 792.229 May an agency place restrictions or requirements on the use of these funds, and may the agency restrict the disbursement of such funds to only one type of child care or to one location?

(a) Depending on the agency's staffing needs and the employees' own needs, including the local availability of child care, the agency may choose to place restrictions on the use of its funds for the child care subsidy program. For example, an agency may decide to restrict use to the following:

- (1) Federal employees who are full-time permanent employees;
- (2) Federal employees using an agency on-site child care center;
- (3) Federal employees using full-time child care; or
- (4) Federal employees using child care in specific locations.

(a) With the exception of § 792.229(c) an agency may determine whether and what restrictions to impose on the use of appropriated funds for the child care subsidy program.

(b) Agencies must not restrict the use of funds to apply to accredited child care providers only.

§ 792.230 May an agency use appropriated funds to improve the physical space of the family child care homes or child care centers?

An agency may not use appropriated funds under this program to improve the physical space of child care centers and family child care homes.

§ 792.231 Is an agency permitted to make advance child care subsidy program payments for an individual Federal employee?

An agency may choose to make advance payments to a child care provider in certain situations. Advance payments may be paid to the child care provider when the provider requires payment up to one month in advance of rendering services. Except in accordance with § 792.225, an agency may not make advance payments for more than one month before the employee receives child care services.

[FR Doc. 03-6887 Filed 3-21-03; 8:45 am]

BILLING CODE 6325-41-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 652

Technical Service Provider Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rulemaking amends the technical service provider assistance rule, 7 CFR part 652, published in the *Federal Register* on November 21, 2002, by setting forth the United States Department of Agriculture (Department) process for establishing payment rates for program participant acquisition of technical services. In addition, this rulemaking sets forth the Department's policy regarding subcontracting by technical service providers in the course of their delivery of technical services and amends 7 CFR part 652 accordingly. Finally the Department is using the opportunity presented by this rulemaking to clarify its policy regarding the certification process, to amend the definition of technical service provider in 7 CFR 652.21, and to amend the dates for submitting an Application for Certification in 7 CFR 652.21(f) and (d). The Natural Resources Conservation Service (NRCS) seeks comments from the public on this interim final rule.

DATES: Effective date: March 24, 2003. Comments on this rule must be received by June 23, 2003.

ADDRESSES: Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, or by e-mail to: melissa.hammond@usda.gov, Attention: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS Home Page at <http://www.nrcs.usda.gov>, by selecting Farm Bill 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013-2890; telephone: (202) 720-6731; fax: (202) 720-3052; submit e-mail to: gary.gross@usda.gov, Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION:

Discussion

Payment Rates

As indicated in the preamble section of the technical service provider interim final rule, 7 CFR part 652, the Department is publishing this interim final rule, which amends the technical service provider rule, in order to set forth the Department's method of setting payment rates for technical service provider reimbursement. Accordingly, this rulemaking adds a new paragraph (j) to section 652.5 of the existing technical service provider rule, and adds a new paragraph (h) to section 652.4, which addresses the use of subcontractors. This rulemaking also clarifies the Department's policy regarding the certification process set forth in the interim final rule at 7 CFR part 652.21.

The Department will determine payment rates by setting not-to-exceed rates for technical services. The Department may use some of the methods set forth in the preamble of the interim final rule, 7 CFR part 652, when calculating these rates, including conducting a national survey of technical service providers and vendors who provide technical services to determine their price data for actual services performed and using NRCS's own cost of providing technical services. In addition, when determining not-to-exceed rates, NRCS may use other sources of data that it determines are reliable, including its own cost of procuring technical services. The Department chose this method to set the technical service not-to-exceed rates

because it provides direct input from the marketplace.

For at least the first year of implementation of the technical service provider process, one of the methods NRCS will use to obtain cost data is directly from technical service providers through the existing Internet-based posting system called FedBizOpps. Through a notice on the NRCS Web site, and using existing agency mailing lists, the Department will be requesting providers to respond to a solicitation posted at the FedBizOpps Web site, <http://www.fedbizopps.gov/>, for cost data related to specific categories of technical services and specific geographic areas. The Department anticipates that it will post this solicitation by March 1, 2003. Any price data collected from technical service providers and vendors with the national survey is for informational purposes only to assist the Department in establishing payment rates for technical services. Submission of price data by the provider does not obligate the Department, nor does it guarantee the provider the award of a specific contract by any program participant or the Department for carrying out technical services.

NRCS will analyze the pricing information submitted through FedBizOpps, and that obtained from other sources, using a standardized methodology. Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services. To ensure consistency across State lines, NRCS will coordinate payment rates between adjacent States where similar resource conditions and agricultural operations exist, taking into account differences in State laws, the cost of doing business, competition, and other variables. NRCS may subsequently adjust the rates, as needed on a case by case basis, during program implementation in response to unusual conditions or unforeseen circumstances, such as services provided for highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate. The Department will review the Technical Service Provider system, including the certification, payment, and technical service quality evaluation processes, by March 1, 2004.

In order to encourage participants to consider price in their selection of technical service providers, NRCS may provide program participants, who select technical service providers with prices below the not-to-exceed rate,