

Before the
Postal Regulatory Commission
Washington, DC 20268-0001

Accounting Practices and Tax Rules for
Competitive Products

Docket No. RM2008-5

PUBLIC REPRESENTATIVE'S COMMENTS
ON PROPOSED RULES

(October 20, 2008)

The Public Representative files the following comments on proposed Part 3060—
Accounting Practices and Tax Rules for the Theoretical Competitive Products
Enterprise.¹

I. INTRODUCTION

In proposed Part 3060, the Postal Regulatory Commission (Commission) balances one important objective in the Postal Accountability and Enhancement Act (PAEA) — allowing the Postal Service to pursue an expanded role in offering competitive products — with several others, such as preventing unfairness to competitors, promoting accountability and transparency, and minimizing compliance expense. Review of the proposal indicates that it demonstrates expert balancing of these objectives.

The Commission deserves considerable credit for this achievement, as the rulemaking involves many questions of first impression under the PAEA and coincides with other important PAEA implementation efforts. The proposal stands as a largely self-contained, comprehensive set of rules, and is significant in that it appears to resolve many key questions in a way that is likely to reduce the potential for disagreement. At

¹ This proposal was issued on September 11, 2008, in Commission Order No. 106, captioned Order Proposing Accounting Practices and Tax Rules for Competitive Products. 73 FR 54467 (September 19, 2008) (Order No. 106).

the same time, in terms of the Public Representative's responsibility, some aspects of the proposal should be revisited prior to final issuance. The most significant issue is clarification of the Commission's intent with respect to public notice and public involvement in the course of the extended reporting and review process contemplated in the proposal. This is a missing element in the preamble and the accompanying rules, perhaps because of the need for an intense focus on technical matters or an assumption that other Commission rules might logically address this matter. This stage of the rulemaking provides the Commission with an opportunity to introduce into this set of rules some of the same, or similar, types of assurances of public notice and public involvement that traditionally have been included in Commission rulemakings.

The Commission's attention to this matter would serve the interests of the general public. Moreover, addressing this concern would not appear to require an extra round of comments, as the opportunity to file reply comments in this docket has already been established.

II. OVERVIEW

Procedurally, publication of this proposal follows issuance of a report by the U.S. Department of Treasury (Treasury), a report by the Federal Trade Commission with a section on the Postal Service's competitive activities, and a recent Public Inquiry initiated by the Commission.² These steps are part of a coordinated set of PAEA requirements designed to facilitate issuance of final rules concerning PAEA-based accounting and tax treatment for competitive products by the December 19, 2008 statutory deadline, barring exercise of an option that triggers an extension. The Commission also has recently published proposed Part 3050, captioned Periodic

² See *Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operation of the United States Postal Service's Competitive Products Fund*, December 2007 (Treasury Report) and *Accounting for Laws that Apply Differently to the United States Postal Service and Private Competitors*, December 2007, at 93-98, and Notice and Order Providing an Opportunity to Comment on Treasury Report, January 28, 2008 (Order No. 56).

Reporting Rules, in a separate rulemaking, and draws on that proposal to a limited extent here. See *generally* Docket No. RM2008-4 (Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports, Order No. 104, August 22, 2008, published at 73 FR 53324, September 15, 2008).

Conceptually, the proposal rests on the Commission's decision to propose the use of an accounting construct to fulfill statutory goals. See Order No. 106 at 3. This approach, which the Commission refers to as the Postal Service's theoretical competitive enterprise (CPE), reflects Treasury's position on a fundamental question. It also coincides with the consensus view of the Postal Service and other commenters addressing this issue in the Public Inquiry.

The Commission's proposal also translates other important policy choices into rules that are intended to guide CPE-related accounting, reporting, and oversight. In most instances, as with the CPE decision, the proposed rules reflect the conclusion that Treasury's recommendations provide an appropriate solution under the PAEA. They also show an interest in interpreting the PAEA in a way that promotes administrative ease. In several instances, however, the Commission proposes a variation on Treasury's recommendations or relies on past agency practice. This is evident, for example, in the addition of a pro-forma balance sheet to the three financial reports Treasury recommended; the proposal to use a simplified tax rate associated with C corporations, rather than an average effective rate, as Treasury seemed to prefer; and the definition of attributable costs.

This means that some Commission proposals strike a different balance than their Treasury counterparts, mainly by placing more emphasis on addressing anticipated oversight needs and somewhat less emphasis on minimizing compliance effort and expense. Faced with uncertainty about the extent of its needs, the Commission appears to be seeking more, rather than less, information than Treasury considers necessary. It is unclear how to balance the Commission's choice against the burden it may pose on the Postal Service, as the record to date lacks concrete estimates.

However, a clearer picture may emerge if the Postal Service is able to provide some insight in its initial comments.

Public notice and opportunity for public involvement. The proposal does not include any explicit provisions addressing public notice and public input, but an order the Commission is required to issue under proposed rule 3060.42 provides an unstated opportunity for the Commission to seek public input and to direct that its findings be published in the *Federal Register*. In addition, the Commission, on its own accord, may always issue any notice or order it deems appropriate, so this is a standing option that could be exercised to insure public notice and public involvement. The Commission also could attempt to coordinate public notice and public involvement in this area with opportunities it already provides in connection with the annual review.

The forgoing options seem to have limited merit for purposes of proposed Part 3060, especially given the importance the PAEA places on maintaining parity for the Postal Service's competitors and fairness for users of market dominant products. It therefore seems preferable to address public notice of, and an opportunity for public involvement in, CPE-related reporting and review as part of a systematic, convenient, and tested approach that allows the Commission and the Postal Service to fulfill their responsibilities under Part 3060. See Order No. 106 at 49-50 (proposed rules 3060.40 and 3060.42). The importance of considering an approach like this is especially significant in terms of Part 3060, as it contemplates a review process which, even at its shortest, is far longer than the new rate proceedings under the PAEA, with the potential to extend up to 3 years. *Id.* (proposed rule 3060.42). The process can also incorporate procedures to address the Postal Service interest in certain methodologies and accounting changes, referred to in proposed rules 3060.12(e) and 3060.13(e).

Proposal. The Public Representative proposes the addition of a rule to proposed Part 3060 that would involve the establishment, for each fiscal year, of a separate, formal CPE Reporting and Review docket. This docket would function as an umbrella mechanism for an initial Commission order, the submission of Postal Service filings pertinent to the reporting year, other Commission documents, and any other pertinent

filings associated with the fiscal year under review. The rule also would provide an opportunity for public comment and public involvement in a manner to be determined by the Commission. A discussion draft that might serve as a starting point for further consideration appears in Attachment A.

The remaining discussion:

- briefly expands on the appropriateness of the Commission's choice of a theoretical construct and on the impact of this choice on several rules;
- suggests that consideration be given to providing additional explanation in the preamble on certain points and revising certain rules to clarify intent;
- suggests that consideration be given to reformatting the proposal by using subparts; and
- suggests the inclusion, in an easily-accessible location on the Commission's website, of a brief explanatory note (in lay person's language) about CPE-related matters.

III. THE COMMISSION'S DECISION IN FAVOR OF A THEORETICAL ENTERPRISE IS CONSISTENT WITH THE INTERESTS OF THE GENERAL PUBLIC IN THIS DOCKET, AS ARE MANY RELATED DECISIONS REFLECTED IN THE PROPOSED RULES

Establishment of a theoretical entity. The PAEA can be read as envisioning the Postal Service's competitive product offerings as though they were offered by a stand-alone enterprise, when in fact these products are provided by a functionally interrelated business. This raised, early on, the question of whether it would be necessary or appropriate to create a separate legal entity to satisfy the law. Treasury, which was the first entity under the new statute required to express a formal opinion, concluded that a separate legal entity would add to compliance costs, and generally was unnecessary to accomplish the goals of the PAEA. Instead, it said these goals could be achieved through the use of an accounting entity. Treasury Report at 4. The Postal Service and other commenters addressing this issue in the Public Inquiry agreed with Treasury's position.

Order No. 106 makes clear that the Commission has concluded that use of an accounting entity, referred to as the CPE, is fully consistent with the PAEA.³ By making this choice, the Commission provides an unequivocal answer to a question that is critical to this rulemaking. It also does so at a very early stage of the rulemaking. The Public Representative reiterates support for the CPE approach on grounds that it facilitates the blend of accountability, ease of administration, and efficiency the PAEA envisions for the new regulatory system. This approach recognizes that delivery of competitive products typically is interrelated with market dominant products, so it is impossible to isolate the costs of the separate entity. It recognizes that if a separate entity is used, common facilities would make it necessary to create “arm’s length” transactions between entities, with little or no improvements in income and expense measurements. It acknowledges that costs would have to be incurred to price the transactions, and there would be some duplication of administrative costs. Finally, it acknowledges that economies of scope and scale, which benefit users of both market dominant and competitive products, would be lost.

Impact on certain other decisions. In the preamble, the Commission states that the use of the CPE approach means that related financial reporting will be based on accounting and data collection systems used for all postal services. It says that it would not be economical to require the Postal Service to construct entirely new systems solely for competitive products. Order No. 106 at 11-12. Accordingly, the Commission makes several supporting decisions that are not fully consistent with Generally Accepted Accounting Principles (GAAP) and tax accounting rules, based on the conclusion that it has the discretion to do so under the PAEA and that expense of achieving the requisite level of consistency would be too great or that the period during which the treatment will be allowed will be comparatively brief. For example, according to the preamble,

³ The CPE will employ the Postal Service Competitive Products Fund (CP Fund), an accounting and tax mechanism directly established in the PAEA, as a conduit for monetary transactions. 39 U.S.C. 2011. The CP Fund will operate under the auspices of Treasury, standing as a complement to the long-established Postal Service Fund, which is also under Treasury.

depreciation on assets transferred to the CPE will be computed according to their on-going depreciation schedule, with the unrecovered cost allocated to the remaining years of the assets' original lives. Under proposed rule 3060.10(a), the costs of producing the competitive products are computed using the Postal Service's accounting system as approved by the Commission. According to the preamble, depreciation on assets transferred to the CPE will be computed according to their on-going depreciation schedule, with the unrecovered cost allocated to the remaining years of the assets' original lives. This could differ from GAAP and tax accounting for a newly-formed entity. For GAAP purposes, the basis in a transferred asset would be its fair market value at the date of transfer. These assets were formerly used by a tax exempt entity, and now will be used by the CPE, a "hypothetical taxable entity." For tax purposes, the transfer to the taxable CPE is analogous to an individual transferring assets to a newly-formed corporation, and because the assets were not formerly used in a taxable trade or business, the CPE's basis would be the lesser of the transferor's basis or the fair market value at the date of the transfer. However, under the proposed rules, the CPE is to assume a tax basis in the assets equal to the Postal Service's book value of these assets, apparently because of the expenses that would be involved in establishing these amounts. Over time, it is expected that the CPE will conform its depreciation expense to conform to tax accounting rules. This means that when assets are replaced, the replacements will be accounted for in accordance with the tax accounting rules. See Order No. 106 at 29-30.

Definition of attributable costs. One issue explored in the Public Inquiry concerned differences between Treasury's definition of "attributable" in the context of postal costs and the Commission's definition. The reason for the interest in the scope of this definition is that costs must be attributed to competitive products to determine whether cross-subsidization occurs and to determine taxable income from competitive products. See 39 U.S.C. 3633(a)(2). In proposed rule 3060.10, the Commission adopts its longstanding definition of attributable costs. This includes volume-variable, product-specific, and group-specific costs. The validity of including group-specific costs is

based on the position that if a cost is necessary to provide the group of competitive products, by definition, the cost is attributable to the group by “readily identified causal relationships.” The Public Representative supports the Commission’s choice.⁴

IV. OTHER OBSERVATIONS

The Commission’s preamble, consistent with federal rulemaking requirements, provides explanations that generally permit an informed reader to readily understand the reasoning behind the proposed rules. As discussed below, further explanation in the preamble or changes in the text of the rules may be useful or necessary in certain instances. With the exception of a concern about proposed rule 3060.43(d), which addresses the treatment of net operating losses, these points are comparatively minor and do not cast doubt on the soundness of the rules.

Provisions supporting calculation of the income tax. Proposed rule 3060.40, captioned Calculation of the Assumed Federal Income Tax, addresses several basic aspects of PAEA provisions related to the federal income tax. These include establishing an applicable tax rate, establishing September 30 as the end of the fiscal year for purposes of calculating the annual income tax, setting January 15 as the deadline for annual submission of the calculation to the Commission, and addressing the treatment of estimated taxes and state, local, and foreign taxes.

The January 15 deadline accurately restates an existing PAEA requirement and the coinciding fiscal year-ends reflect a common-sense decision, so these provisions pose no conflict with the interests of the general public. However, some elements of this rule warrant mention. First, as the Commission notes in the preamble, section 2011(h) of the PAEA provides minimal guidance on how the assumed tax should be computed. Order No. 106 at 21. This means that the Treasury Report is the main source for a perspective on potential approaches.

⁴ Group-specific costs, which are those costs incurred in the provision of competitive costs as a whole that cannot be causally related to any specific competitive product, were recently reclassified from institutional costs. See PRC Order No. 99 (August 18, 2008).

The Commission observes that Treasury identifies two approaches (complex or simplified) that could be used, and further discusses three variations on the simplified approach. *Id.* at 22. It weighs several considerations and ultimately decides that of three variations on the simplified approach, use of the effective C corporation tax rate may impose somewhat more burden, but obviates a Commission concern that using an average effective tax rate is not consistent with the PAEA. *Id.*

As between the complex approach and the simplified approach, the Public Representative supported the use of a simplified approach in the Public Inquiry, so the Commission's proposed approach is consistent at that level of discussion. However, the Public Representative is not able to determine whether the simplified approach the Commission proposes imposes undue burden on the Postal Service. The Postal Service's comments should indicate whether it accepts the Commission's proposal and whether it can provide detailed information on the extra burden it poses, relative to the average effective rate.

Second, the Commission's inclusion of provisions addressing quarterly tax payments and state, local, and foreign taxes is useful, appropriate, and adds certainty to the CPE tax process. For consistency with the preamble and clarity of the rules, consideration should be given to minor revisions to proposed rules 3060.40(d) and (e). Proposed rule 3060.40(d) now reads: "No estimated taxes need to be calculated or paid." The suggestion is to revise it to read: "No estimated **federal income** taxes need to be calculated or paid." (Emphasis supplied.) Proposed rule 3060.40(e) now reads: "No state, local, or foreign taxes need to be calculated." The suggestion is to revise it to read: "No state, local, or foreign **income** taxes need to be calculated **or paid**." (Emphasis supplied.)

Third, it is axiomatic that the CPE's competitors must use tax accounting rules to calculate their tax liabilities. Section 3634 of the PAEA could be interpreted to mean that the tax liability must be computed using tax accounting rules. Treasury acknowledged this, but in a related recommendation seems to indicate the Commission is not necessarily bound by the tax accounting rules for calculating the CPE's tax

liability. That is, Treasury generally would permit the CPE to compute its taxable income using Generally Accepted Accounting Principles (GAAP), without regard to whether the tax accounting rules may yield a different result. Treasury Report at section 2.1 and section 2.6.

Notably, no commenters in the Public Inquiry disagreed with reliance on GAAP for computing CPE taxable income. However, given PAEA interest in fairness for competitors, Treasury's recommendation may give rise to concern, from others, about the possibility of competitive unfairness, in the form of the question: "Why is the CPE not held to the same standards as its competitors, who are burdened with converting their GAAP accounting income to tax accounting income?"

An appropriate response seems to be that the income tax system reallocates resources from private businesses to the Federal government. The tax law, which raises revenue for the Federal government, can place much of the compliance costs on the taxpayer. However, if the CPE creates additional tax compliance costs, the loss cannot be shifted out of the Postal Service as a whole. Also, if the differences generally mean that GAAP income is less than the taxable income computed using tax accounting rules, the competitive products would be required to increase rates to recover attributable costs. The higher rates, however, would then put the CPE at a competitive disadvantage. But most importantly, the differences between tax and financial accounting are in all likelihood not so great that the CPE could operate at a significant competitive disadvantage to private businesses.

Commission review. Proposed rule 3060.42 addresses PAEA-mandated review. Two aspects merit further Commission attention. First, the proposed rule includes no express opportunity for public notice. The importance of public notice in situations involving a formal Commission is clear, given the PAEA's concern about cross-subsidy and the potential for market dominant users to benefit from an assumed tax transfer. It would be useful if the Commission provided some form of formal notice to the public, as indicated earlier; however, adoption of the more comprehensive provision suggested earlier might obviate the need for a revision in this section.

Second, this proposed rule includes a 3-year statute of limitations for issuance of a Commission order to cure or explain any errors, omissions, or other deficiencies associated with a filing under proposed rule 3060.40. This corresponds to the basic rule under federal income tax regulations, but those regulations also provide for a longer period under certain circumstances. The Public Representative does not seek an alternative, longer “look back” period in the final rules because postal financial submissions are subject to the type of extensive audit that is likely to detect the actions that trigger the longer period. In addition, the new regulatory approach requires some tradeoffs to be effective and efficient. Nevertheless, it might be useful if the preamble acknowledges the Commission’s awareness of the longer period and gives a reason supporting the Commission’s decision not to incorporate that alternative. This may foreclose claims of preferential treatment.

The treatment of CPE net operating losses. Proposed rule 3060.43(d) is one of several provisions addressing the annual transfer from the CP Fund to the Postal Service Fund. Based on the preamble, this provision reflects the Commission’s conclusion that the CPE should be permitted to exercise an option that approximates the Internal Revenue Code’s allowance of carry backs and carry forwards of corporate net operating losses. Proposed rule 3060.43(d)(1) addresses the carry back; proposed rule 3060.43(d)(2) addresses the carry forward. Order No. 106 at 27.

The Public Representative raises two points in connection with this proposal. First, the preamble briefly addresses the Commission’s rationale by stating that a carry back that results in a refund of a previously transferred tax remittances “should not be viewed as a prohibited cross-subsidy by market dominant products of competitive products.” *Id.* It says: “It should instead be seen as the same type of tax treatment any Postal Service competitor would be permitted to claim under chapter 1 of the IRC.” *Id.* (footnote omitted). It would be useful if consideration could be given to providing an additional sentence or two that addresses why the refund should be viewed this way. Amplification would promote the interests of the general public in having an explanation that sets to rest any unfounded concerns about cross-subsidy.

Second, the preamble indicates that the Internal Revenue Code is the stated model for the proposed net operating loss treatment, but the Commission's corresponding proposed rule does not appear to parallel the income tax regulations in all pertinent respects. This may produce an unintended result. The proposed rule calls for the CPE to receive a refund computed as follows: the lesser of the amount paid in the past 2 tax years, or the amount of the loss. If one assumes that the CPE had taxable income for the 2 previous years totaling \$500 and paid \$175 in tax (a 35% tax rate), and in the current year the CPE had a \$100 loss, the correct result would be a refund — a transfer to the CPF of $\$100 \times .35 = \35 . Under the proposed rule, however, the refund would be \$100.

If there is an intentional difference in the terms of the CPE net operating loss carry back (and the result it produces is acceptable to the Commission), it would be helpful if the preamble explained the rationale. Otherwise, consideration should be given to revising the proposed rule so the result that is achieved under income tax regulations is also achieved in Part 3060. Attachment B provides suggested wording for a revision, if revision is deemed warranted.

Investment income. The Commission's proposal presents the format for an income statement that includes a line for "investment income." *Id.* at 45 (Table 1). This is ostensibly the income earned by the Treasury's investment of funds it holds for the use of the CPE. However, the proposed rules do not appear to address the tax treatment of this income. Because the funds that produce the income were received from the competitive products customers, it would seem that the investment income could be treated as an offset to expenses in arriving at a determination as to whether competitive products were covering their costs. Also, treating the investment income in this manner will increase CPE taxable income. Alternatively, this income should be treated as an addition to taxable income. It would be useful if the final rules clarified this point.

V. FORMAT

Proposed new Part 3060 consists of 17 discrete rules covering a broad range of matters related to the successful establishment and operation of the CPE. The conscious use of gaps in the numbering of these rules points to the likelihood that the Commission anticipates adding new rules to this Part as experience is gained with the CPE.

The current format, as well as the numbering and captions of the rules, are satisfactory as proposed. Once the Commission addresses substantive issues that need to be resolved before the rules can be finalized, it may want to consider whether the use of subparts would improve presentation, promote readability, and facilitate future changes. The division of a discrete Part into subparts is a standard, permissible agency practice for rules that will appear in the Code of Federal Regulations. It is also a practice the Commission has successfully employed in many rulemakings, including several recent ones, so this approach would be consistent with issuance of rules under the PAEA. Moreover, the rules in proposed Part 3060 are well developed, and lend themselves to logical subdivision.

VI. THE COMMISSION'S WEBSITE PRESENTS AN OPPORTUNITY TO PROVIDE THE GENERAL PUBLIC WITH A CONCISE, EASILY-ACCESSIBLE EXPLANATION OF MATTERS ADDRESSED IN THIS RULEMAKING

One popular observation about postal rate and classification under the Postal Reorganization Act (PRA) was that it was extremely difficult for the general public to quickly get a sense of “how and why” things were done. Although the process was familiar to postal practitioners, it could appear byzantine to others and prove daunting to someone trying to gain a quick understanding.

The PAEA is much more straightforward than the PRA in many respects, so the new regulatory framework should be much easier for the general public to understand. The Commission also has a new, significantly upgraded website. The improvements not only benefit practitioners, but also make the website a much more inviting and

practical option for those with only an occasional need for postal information and data. However, these users may still find it difficult to quickly research topics like the CPE because the website's information retrieval system still relies to some extent on familiarity with docket designations and Commission rules.

To provide these users with easy access to a lay person's summary of how the final rules on this topic will promote the Commission's implementation of the new law, the Public Representative suggests that the Commission consider including a brief explanatory note about the CPE — and its relationship to Market Dominant operations — in an easily-accessible location on the Commission's website. The note could also direct the user to other locations on the website where more detailed information could be found, but should provide a relatively self-contained description of the role of the CPE. Locations on the Commission's website, as concurrently configured, that appear to be suitable for this type of note are:

- under the "About PRC" main tab; and
- under the "Rates and Fees" or "Consumer Information" tabs located within the larger tab captioned "Consumer Interests."

The Commission may want to consider other locations on the website, as well. However, the addition of a note at either of the suggested locations should not entail any material new expense for the Commission in terms of website revision or maintenance.

VII. SUMMARY

A review of proposed Part 3060 indicates that most policy choices reflected therein appear to be consistent with the interests of the general public, as those pertain to the subject matter of this rulemaking and to federal rulemaking in general. However, there is a clear need to include in the rules a mechanism that will provide a systematic approach, in each reporting year, not simply for ensuring public notice and an opportunity for public comment, but for tracking the process already envisioned in Part 3060. This process focuses on Postal Service filings and Commission review that has the potential to extend over a long period, so planning and coordination are essential.

In addition to adding one or more provisions addressing public notice and public input, consideration should be given to revising the text of certain rules, providing additional explanation in the preamble, where warranted, and reorganizing the format of the rules. This would promote the interests of the general public by providing more clarity, consistency, and accuracy.

Respectfully submitted,

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***Illustrative Additional Text for
New Provision in Proposed Part 3060**

§ 3060.2 Public Docket

(a) For each fiscal year to which the reporting, review and related oversight requirements in this Part apply, the Commission shall issue an order establishing a formal docket on or about the fiscal year-end. The docket shall have a caption that clearly indicates it includes reporting and review of the Competitive Products Enterprise for the fiscal year of interest.

(b) The order issued under subparagraph (a) of this section shall include information sufficient to inform the general public of the reporting, review and related oversight requirements. This includes, but is not limited to, deadlines for Postal Service filings, Commission orders, and any other actions for which a material date or deadline is known at the time of the issuance of the order.

(c) The order issued under subparagraph (a) of this section shall also include information about the Commission's plans for providing an opportunity for the public to comment on, or otherwise participate in, the review and oversight process conducted under this Part and any other information the Commission deems appropriate.

(d) The Commission shall direct the Secretary of the Commission to arrange for publication of the order establishing a formal Part 3060 Competitive Products Enterprise Reporting and Review Docket.

(e) In each formal docket under this Part, the Commission shall take any other actions and issue any other orders consistent with its responsibilities under this Part, including issuing the order referred to in section 3060.42 and directing that the Secretary of the Commission arranged for publication of that order in the *Federal Register*.

(f) For purposes of fiscal year 2008 reporting, issuance of the order required under paragraph (a) may occur at the Commission's discretion.

* The section number, caption, text and organization of the proposal are intended to serve as a starting point for further consideration. In the rules as presently configured, the number assigned to this rule would place it immediately after proposed § 3060.1, captioned "Scope." This has been done primarily for convenience. Another number may be more appropriate.

**Illustrative Alternative Text for § 3060.43(d)
in Proposed Part 3060**

§ 3060.43(d) If assumed taxable income from competitive products for a given year is negative:

(1) If a payment was made to the Postal Service Fund for assumed Federal income tax on the second preceding year's income, the negative income for the current year will reduce the taxable income for the second preceding year, but not below zero. The assumed Federal income tax for the second preceding year will be recomputed on the income less the current year loss applied against that income. The difference between the assumed Federal income tax paid for the second preceding year and the recomputed tax will be paid to the Competitive Products Fund no later than January 15 next occurring following the close of the relevant fiscal year.

(2) If the current year's loss exceeds the taxable income for the second preceding year, the remaining loss will reduce the taxable income for the preceding tax year, but not below zero. The assumed Federal income tax for the preceding year will be recomputed on the income for that year less the current year loss applied against that income. The difference between the assumed Federal income tax paid on the preceding year's income and the recomputed tax will be paid to the Competitive Products Fund no later than January 15 next occurring following the close of the relevant fiscal year.

(3) If the current year's loss exceeds the taxable income for the two preceding years, the loss may be carried forward and will reduce the income subject to tax for each subsequent year, until the current year's loss has been fully offset by income.

(4) If the entire loss has not been used to offset taxable income by the 20th year following the loss, the unused loss will expire.