

**BEFORE THE
POSTAL REGULATORY COMMISSION**

**REGULATIONS ESTABLISHING
SYSTEM OF RATEMAKING**

DOCKET NO. RM2007-1

**COMMENTS OF UNITED PARCEL SERVICE
IN RESPONSE TO SECOND ADVANCE NOTICE OF
PROPOSED RULEMAKING ON REGULATIONS
ESTABLISHING A SYSTEM OF RATEMAKING
(June 18, 2007)**

Pursuant to Commission Order No. 15 (May 17, 2007), United Parcel Service hereby comments on specific issues central to implementing the regulations required by the Postal Accountability and Enhancement Act ("PAEA"). We limit our comments to the Commission's questions regarding the regulation of competitive products.¹

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1. The Commission intends to issue final regulations by October, 2007 (Order No. 15, p. 2). However, PAEA requires Treasury and the Federal Trade Commission ("FTC") to formulate recommendations for the Commission on issues that are central to this docket. See 39 U.S.C. § 2011(h)(1)(A); Pub. L. No. 109-435 (December 20, 2006) ("P.L. 109-435"), § 703. Thus, we urge the Commission to do its utmost to coordinate the development of its regulations in this docket with Treasury and the FTC, either by requesting those agencies to complete their reports well prior to their statutory deadlines under PAEA, or by delaying the issuance of these regulations to allow for consideration of those agencies' recommendations.

QUESTION 4

The Commission has asked for comments on the definition of the products which PAEA classifies as competitive.

Domestic Mail

The “mail classification schedule” referred to in section 3631(c) of PAEA means the official Domestic Mail Classification Schedule (“DMCS”) currently in effect as reproduced at Appendix A to Subpart C of the Commission’s regulations, 39 C.F.R. § 3001. Under that schedule:

- a. “priority mail” is defined in DMCS section 223.1. It includes all First-Class mail items weighing more than 13 ounces, as well as any other mail item that a sender designates as “Priority Mail.”
- b. “expedited mail” is the subject of schedule 100 of the DMCS. Presently, it includes only mail matter entered as “Express Mail” as defined in DMCS section 110.
- c. Because the statutory term “bulk parcel post” does not neatly correspond to a specific classification or classifications defined in the DMCS, its definition is less certain. As a starting point, we believe the likely congressional intent is that “bulk parcel post” is all mail matter included in the “Parcel Post Subclass” as defined in DMCS section 521 that is entered at one time by commercial mailers in quantities of more than one piece.

“Bulk parcel post” clearly includes all mail matter entered under any of the following DMCS provisions: (1) Parcel Select – Destination Bulk Mail Center mail as defined in DMCS section 521.23; (2) Parcel Select – Destination Sectional Center Facility mail as defined in DMCS section 521.24; (3) Parcel Select – Destination

Delivery Unit mail as defined in DMCS section 521.26; (4) Parcel Select Return Service – Return Delivery Unit mail as defined in DMCS section 521.27; (5) Parcel Select Return Service – Return BMC mail as defined in DMCS section 521.28; (6) mail receiving the Barcode Discount for Bulk Parcel Post defined in DMCS section 521.31; (7) mail receiving the Bulk Mail Center Presort Discounts defined in DMCS section 521.4; and (8) mail receiving the Barcode Discount for Inter-BMC, Intra-BMC, and Parcel Select – DBMC Parcel Post as defined in DMCS section 521.5. Each of these categories requires a mailer to enter a minimum volume, at only those facilities designated by the Postal Service. The overwhelming majority, if not all of it, is likely entered by commercial mailers.²

“Bulk parcel post” also includes that portion of mail matter entered by commercial mailers in quantities of more than one piece as Inter-BMC and Intra-BMC Parcel Post as defined in DMCS sections 521.21 and 521.22. We are not aware of any easy way to identify this portion of Intra-BMC and Inter-BMC Parcel Post, other than those pieces that qualify for the Barcode Discount defined in DMCS section 521.5. Thus, the Commission should require the Postal Service to break out bulk Intra-BMC and bulk Inter-BMC shipments from total Intra-BMC and Inter-BMC shipments so that the Commission can appropriately treat these mailings as bulk Parcel Post under PAEA.

- e. The “mailgram” category no longer exists.

2. If there are isolated instances of multiple-piece entry by a residential mailer at facilities other than a post office, for ease of administration that volume should also be defined as bulk parcel post.

International Mail

The Postal Service is in the best position to contribute to a working definition of “bulk international mail,” since, again, there is no clear definition of such mail in the current International Mail Manual (“IMM”). However, the same principles should apply here as in the case of domestic mail, i.e., “bulk international mail” is all international mail that is entered by commercial mailers in quantities of more than one piece. Thus, “bulk international mail” includes at least the following: (1) International Priority Airmail Service as defined in IMM section 292; (2) International Surface Air Lift Service as defined in IMM section 293; (3) all mail entered as International Customized Mail as defined in IMM section 297; (4) all mail entered as part of the Postal Service’s Postal Qualified Wholesaler Program as defined in IMM section 610; (5) all international mail matter for which postage is paid through a corporate account program; and (6) any other international mail matter for which the Postal Service provides a volume discount or has a customized agreement with a shipper.

QUESTION 5

a-b. Whether new rates are of general applicability or not of general applicability, the Commission should require the following information to be filed, for each product whose rates are to be changed, when the Postal Service issues a notice of a rate change under section 3632(b):

- (i) volume;
- (ii) revenue and billing determinants; and

- (iii) attributable costs (using the Commission's costing methods), including an explanation of any substantial cost changes that have occurred or are expected.

Audited data should be reported for the most recently completed fiscal year, and projected data should be reported for the period from when the rates go into effect through the following fiscal year.³ Unaudited data should also be reported for the period from the end of the most recently completed fiscal year through the month prior to the section 3632(b) notice.

This data is needed to make a prima facie showing that the rates comply with the statutory requirements. See 39 U.S.C. § 3633, especially § 3633(a)(2). See also id. §§ 3632(b)(1) (requiring a written "statement of explanation and justification" when rates for competitive products are changed), 3632(b)(2) and 3632(b)(3) (both requiring Federal Register publication or filing with the Commission of the record of the Governors' proceedings in arriving at competitive rates). Since the Postal Service will almost certainly have reviewed and relied on all or at least most of this data in formulating the new rates, it should be readily available, and its submission should not present an undue burden.

If the Postal Service proposes to increase or decrease the rates for any *single* product significantly (e.g., by more than 5%, or by more than 3% from the average for all rates that are to change), it should explain the basis for the change or difference, with supporting data. If the rate change is for the majority of competitive products (e.g.,

3. If the notice is issued shortly after the end of a fiscal year, unaudited data for that year should be filed, and the regulations should require audited data to be filed as soon as it is reasonably available.

if it affects products that together earn greater than 50% of total competitive products revenue), the Postal Service should file the above information for all competitive products, whether their rates are to change or not, to ensure that competitive rates as a whole continue to comply with sections 3633(a)(1) and (3) of PAEA.

This data should be filed with the Commission, as part of the statement of explanation and justification required by section 3632(b).⁴

The same information should be provided whether the new rates are of general applicability or not (such as contract rates, or rates in negotiated service agreements), since the requirements of section 3633 apply equally to both.

Given the Postal Service's increased flexibility to set competitive product rates under PAEA, full transparency is critical to ensure compliance with section 3633. See H. Rep. No. 66, Part I, 109th Cong., 1st Sess. (April 28, 2005), p. 46 (“[Transparency] is a key foundation to ensuring fair treatment of both customers and competitors.”) The specified information is especially critical for competitive rate changes, since the primary purpose of PAEA as to competitive products is to set price floors, whereas for market-dominant products the primary purpose is to protect (via the rate cap) against rates that are too high.

Any legitimate concerns regarding commercial sensitivity of information required to be filed can be accommodated under 39 U.S.C. § 504(g).

c. As long as the above information is filed, then the information needed to support a rate decrease is no different from that needed to support a rate increase.

4. Depending on the Commission's actions under section 2011(h)(2)(B) in response to Treasury's recommendations on accounting principles and practices, these filing requirements may require revision.

However, as important as this information is for any rate change, it is even more important for proposed competitive rate decreases, to ensure that each individual competitive product will cover its attributable costs, as required by section 3633(a)(2). Again, that is especially so since the primary purpose in the case of competitive rates is to set price floors.

d-e. When the Postal Service seeks to support new competitive products, whether of general applicability or not, it should file the above data as applicable to the new product and to any product out of which the new one would be removed, as well as any other information showing that there is a substantial cost difference or a substantial difference in demand for mail that will comprise the new product. Of course, the rates for any new product must cover attributable costs. 39 U.S.C. § 3633(a)(2).

f-g. A rate or class is of “general applicability in the Nation as a whole or in any substantial region of the Nation” if it is available to all mailers equally, even though some mailers may not in practice be able to meet the conditions of the rate or class (such as a discount based on worksharing). A rate or class is “not of general applicability in the Nation as a whole or in any substantial region of the Nation” when, by its terms, it is available only to an identified or identifiable mailer or class of mailers; this includes products such as contract rates or negotiated service agreements.

QUESTION 6

Background

Before the Commission can determine whether competitive product rates comply with section 3633(a), or even know what information it needs to make that determination, the Commission must first define the standards for compliance with

section 3633(a). In doing so, the Commission must give meaning to each of the three elements which section 3633(a) requires competitive product rates to meet.

Specifically, the Commission must require (1) that, in order to prevent subsidy of competitive products by market-dominant products, competitive products as a whole generate revenue to compensate for unfair Postal Service advantages, 39 U.S.C.

§§ 2011(h)(1)(A)(i)(II) and 3633(a)(1), Pub. L. 109-435, § 703(d); (2) that each competitive product bear its attributable costs, 39 U.S.C. § 3633(a)(2); and (3) that competitive products as a whole bear an appropriate share of institutional costs, *id.* § 3633(a)(3).

(i) Section 3633(a)(1)

PAEA explicitly prohibits the subsidy of competitive products by market-dominant products. In order to ensure this, it goes further than the Postal Reorganization Act did by including explicit requirements designed specifically to guard against competitive subsidy. See, e.g., 39 U.S.C. §§ 2011(h)(1)(A)(i)(II) and 3633(a)(1), Pub. L. 109-435, § 703(d). By adding section 3633(a)(1) as one of three explicit and independent requirements for competitive product pricing *in addition to* the Postal Reorganization Act's attributable cost and institutional cost assignment requirements, Congress has made clear that ensuring the absence of subsidy means something more than the two-step attribution and institutional cost assignment exercise required by prior law. To conclude otherwise would be to read section 3633(a)(1) out of the statute, contrary to the well-established canon of statutory interpretation that every part of a statute should be given effect and that “[a]n interpretation that needlessly renders some words

superfluous is suspect.” Crandon v. Boeing Co., Inc., 494 U.S. 152, 171 (1990) (Scalia, J., concurring).

To fulfill this clear congressional mandate, PAEA requires not only that each competitive product must cover its attributable costs and that all competitive products as a whole must bear an appropriate share of institutional costs, but it also essentially redefines subsidy by requiring that competitive products as a whole bear some additional amount beyond their attributable costs and a fair share of the unattributable network costs from which competitive products benefit.⁵

It is clear, for example, that the Commission must take into account in evaluating the legality of competitive rates any net economic benefit the Postal Service derives from the differential application of Federal and state laws between it and private sector companies. P.L. 109-435, § 703(d). Thus, the Commission should require that competitive products as a whole generate revenue covering the net economic benefit realized by the Postal Service due to preferential legal treatment, on top of their attributable costs and their appropriate share of institutional costs. The Commission will be in a better position to quantify this requirement when it receives the FTC’s report. Until the Commission is able to do so, we suggest that it require that competitive products recover an additional amount above attributable and institutional costs to account for the Postal Service’s advantages.

5. The legislative quid pro quo consists of the elimination of the Postal Reorganization Act’s pre-implementation hearing process, increased Postal Service flexibility to choose those rates which it prefers from a whole range of permissible rates, and elimination of the requirement that *each* competitive product must bear some share of the Postal Service’s institutional costs. In short, the Postal Service has been given vastly greater discretion as to how to price each competitive product so as to meet PAEA’s requirements.

The history of cost attribution and competitive product cost coverages under the Postal Reorganization Act combined with the legislative history of PAEA demonstrates that PAEA's heightened attention to the prevention of competitive subsidy is warranted. Over the last 20 years, the percentage of total costs attributed has fallen. See, e.g., Docket No. R87-1, PRC Opinion, Appendix D, p. 3; Docket No. R2006-1, PRC Opinion, Appendix E, p. 3. Yet, the Postal Service's labor costs approach 80% of its total costs. 2006 United States Postal Service Annual Report, p. 27. This downward drift in attribution is disturbing in the case of such a labor-intensive operation. As PAEA's legislative history shows, Congress was concerned about this overall decline in cost attribution. S. Rep. No. 318, 108th Cong., 2d. Sess. (August 25, 2004), pp. 29-30 ("The Postal Service should be able to attribute a greater percentage of its costs. If they do this, it is likely that a greater share of costs can be attributed to competitive products and, to the extent that they can be, should be reflected in the rates charged for those products.")

Similarly, over the same period, the Commission's combined cost coverages for competitive products have fallen from 157% in Docket No. R87-1 to 143% in Docket No. R2006-1. Docket No. R87-1, PRC Opinion, Appendix G, Schedule 1; Docket No. R2006-1, PRC Opinion, Appendix G, Schedule 1. Compounding matters, the Postal Service's CRA reports show that at least since 1998, actual contributions from competitive products as a whole have consistently failed to meet the institutional cost contributions set by the Commission. Docket Nos. R97-1 through R2005-1, PRC Opinion, Appendix G, Schedule 1; 1998, 2001, 2003 and 2006 Cost and Revenue Analyses. In other words, under the Postal Reorganization Act, competitive products

have not even paid the share of institutional costs which the Commission has said they should pay.

Declining overall attribution levels combined with dwindling institutional cost contributions show that the risk of competitive subsidy has actually increased, at least recently, under the Postal Reorganization Act. PAEA explicitly requires that this trend be reversed.

(ii) Section 3633(a)(2)

The Commission must also “ensure that *each* competitive product covers its costs attributable” (emphasis added). As noted, Congress intended that cost attribution increase under PAEA. S. Rep. No. 318, 108th Cong., 2d. Sess. (August 25, 2004), pp. 29-30.

The Commission has the authority to attribute any costs for which it can reliably identify the class of mail causing those costs. As the Commission recognized in Docket No. R2006-1, under the Postal Reorganization Act “. . . the Commission [was] not restricted to volume variability as a basis for attribution, but may in addition employ such non-volume-related causal relationships as it is satisfied are reliable.” Docket No. R2006-1, PRC Opinion, ¶ 3177 (citing Docket No. R84-1, PRC Opinion, Appendix J, CS IX, ¶ 0010 (citing National Association of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 830-32 (1983)), and finding that certain air transportation costs are fully attributable, despite being less than 100% volume variable). That remains true under PAEA. And PAEA has strengthened the Commission’s ability to insist that it be given the wherewithal to develop those methods and put them into effect. See, e.g., 39 U.S.C. § 504.

To best ensure that each competitive product is covering its attributable costs, the Commission should adopt long-run incremental costs as the proper measure of attributable costs. Long-run incremental costing is widely used for competitive elements in the telecommunications industry. See, e.g., 47 C.F.R. § 51.505(a). Long-run incremental costs are those costs that the Postal Service would avoid if it did not provide a specific competitive product. See Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions, Volume I* (1988), p. 142; David E. M. Sappington and J. Gregory Sidak, “Competition Law for State-Owned Enterprises,” 71 *Antitrust L.J.* 479 (2003), pp. 488-89. It captures a more accurate and greater share of attributable costs than the more restricted “volume variable plus specific-fixed costs” method primarily relied on to date because it includes those fixed costs that are increased over the long run by adding a competitive product but that, unlike specific fixed costs, are incurred by more than one product (“shared fixed costs”). Although shared fixed costs can clearly be traced to the products that cause them using long-run incremental cost analysis, many are not attributed under current methods. In Docket No. R2006-1, the Commission demonstrated its willingness to begin attributing this type of cost. Docket No. R2006-1, PRC Opinion, ¶ 3177.

Long-run incremental costing gives a more complete picture of the changes in Postal Service costs as the result of its provision of a competitive product by evaluating a period that is sufficient for the Postal Service to fully adjust to the impact the provision of the product creates. Thus, to measure attributable costs, the Commission should use long-run incremental costing, or any other method under which costs can reliably be

identified as associated with a product. We provide specific suggestions of areas where cost attribution can improve in response to question 8.

(iii) Section 3633(a)(3)

Section 3633(a)(3) also mandates that competitive products as a whole bear an appropriate share of the Postal Service's institutional costs. Here, PAEA requires that all competitive products bear some share of the unattributed costs of the national network from which they benefit, in addition to the requirement that each competitive product cover its attributable costs. Some of those costs are undoubtedly caused by (attributable to) the competitive products, but cannot be reliably identified as such. Competitive products should not get a "free ride" on the Postal Service's network, with market-dominant products paying all such costs. See Kahn, *supra.*, p. 143, n. 38; Sappington and Sidak, *supra.*, pp. 518-22. PAEA explicitly provides that the institutional cost contribution requirement for competitive products should reflect costs that are "disproportionately associated with any competitive products." 39 U.S.C. § 3633(b).

The Commission should adopt some objective method of assigning institutional costs to competitive products. For example, the Commission could base competitive products' share of institutional costs on the percentage of total postal revenue earned by competitive products as a whole. See 39 U.S.C. § 2011(e)(5)(B). Alternatively, the competitive products' share of institutional costs could track the competitive products' share of the Postal Service's total attributable costs. See Article 14, Directive 97/67/EC of the European Parliament and of the Council (December 15, 1997), 1998 O.J. (L 15), pp. 21-22.

Undue reliance on demand elasticities to assign institutional costs between market-dominant products as a whole and competitive products as a whole should be rejected. It is contrary to the structure of the statute, which separates the regulatory system for market-dominant products from that for competitive products, at least in part to cap the rates for market-dominant products so that they are not too high. Reliance on demand elasticities inevitably leads to the perverse result that market-dominant products would pay more institutional costs simply because market-dominant customers have no choice but to use the Postal Service, even though most have no legally available alternative, or at least no realistic alternative. Instead, PAEA provides the Commission with the opportunity to give effect to one of the predominant reasons why the Postal Service offers competitive products -- to minimize the burden of its network costs on market-dominant products.

Specific Questions

a-b. To assess whether the rates for competitive products satisfy all three elements of section 3633(a), the Postal Service should file:

- (i) volumes;
- (ii) revenue and billing determinants; and
- (iii) attributable costs (determined through long-run incremental costing supplemented by other reliable methods for determining cost causation),

for each individual competitive product (both those which are of general applicability and those which are not). Volume and revenue information should be filed on a quarterly basis, while attributable cost and billing determinant data should be filed annually within 60 days after the end of the fiscal year to coincide with the Postal Service's required

filings under section 3654(a)(1)(B). All such information should also be filed when the Postal Service issues a notice of a rate change. The Postal Service should also file annually an updated calculation of its assumed Federal income tax liability as determined under the Commission's rules, based on Treasury's recommendations under section 2011(h)(1)(A). Finally, the Commission should reconsider the net economic benefit realized by the Postal Service from the differential application of laws identified by the FTC, P.L. 109-435, § 703(d), whenever the Commission or any interested party demonstrates that reconsideration is warranted, but at least every 5 years. See 39 U.S.C. § 3633(b).

c. A number of existing data systems are not adequate to enable the Commission to assess the Postal Service's compliance with section 3633(a), especially with respect to cost attribution. The Commission should use its enhanced authority under PAEA to require that the Postal Service update numerous antiquated cost studies and replace a number of imprecise survey systems that it currently uses to measure costs (especially the costs of Parcel Post). Many of the Postal Service's studies are over 20 years old, and their results likely no longer represent today's operational realities. We suggest that the Commission institute a separate costing proceeding to flesh out these (and all other costing) details.

Moreover, because the current cost studies on Parcel Post do not differentiate between single-piece Parcel Post and bulk Parcel Post pieces, the problem has become even more immediate given PAEA's separation of Parcel Post into separate competitive and market-dominant categories. The Commission should require the Postal Service to immediately implement separate data collection systems for single-piece versus bulk

Parcel Post. Otherwise, PAEA's division of accounting systems between competitive and market-dominant products cannot be given full effect.

The Commission should also require the Postal Service to perform an accurate long-run incremental cost study using the Commission's volume variability methods.⁶

d-e. We address these matters in the "Background" section above, pp. 7-14.

f. Consistent with the mandate in section 3633(b) that the Commission review the competitive institutional cost contribution requirement every five years, the standard applied to determine the appropriate share of institutional costs to be recovered from competitive products as a whole should be valid throughout that 5 year period, unless a special change in circumstances warrants an earlier reevaluation. Competitive product rate compliance with this standard should be evaluated annually.

g. For competitive product rates to have the benefits of a rebuttable presumption of validity, they must satisfy all three elements of section 3633(a), not just the institutional cost assignment and attributable cost requirements.

h. There is certainly an opportunity cost in the case of the Postal Service. As a result, return on investment should be an element of competitive product rates. When determining the appropriate rate, the Commission should look at the cost of capital for the delivery industry as a whole as a benchmark, using the capital structure of the industry as a whole.

6. The incremental cost studies presented by the Postal Service in recent rate cases are based on its often deficient volume variability studies (such as for mail processing labor), and therefore significantly understate long-run incremental costs.

QUESTION 7

The assumed Federal income tax for competitive products should be attributed. While the Postal Service does not actually pay taxes, section 3634(b) requires that it transfer the amount of the assumed tax from the Competitive Products Fund to the Postal Service Fund. Thus, it is a very real cost as far as competitive products are concerned. The responsibility for the tax can be traced to individual competitive products, based on the extent to which each contributes to the total income on which the tax is calculated. As a result, there is a direct causal connection between each product, the income that it generates, and the resulting amount of the assumed tax liability.

QUESTION 8

a-b. We are not aware of any costs currently classified as attributable that, in light of PAEA, should be classified as institutional.

As discussed above in response to question 6, PAEA and its legislative history require increased attribution. There are a number of candidates for increased attribution:

(1) Total city carrier cost attribution has always been too low. It has decreased by nearly 15 percentage points since Docket No. R87-1. Docket No. R87-1, PRC Opinion, Appendix D, p. 1; Docket No. R2006-1, PRC Opinion, Appendix E, p. 1. The attribution of city carrier street time (cost segment 7), currently only 36%, should be improved dramatically. Docket No. R2006-1, PRC Opinion, Appendix E, p. 1.

(2) The attribution of rural carrier costs (cost segment 10) has fallen by over seven percentage points since Docket No. R97-1. Docket No. R97-1, PRC Opinion,

Appendix E, p. 2; Docket No. R2006-1, PRC Opinion, Appendix E, p. 2. The attribution of these labor costs should be improved.

(3) Motor vehicle service cost attribution (cost segment 12) has plunged since Docket No. R97-1 from 47.72% to 25.44%. Docket No. R97-1, PRC Opinion, Appendix E, p. 2; Docket No. R2006-1, PRC Opinion, Appendix E, p. 2. It is difficult to believe that only 25% of these costs can be attributed.

(4) Administrative & Regional Operations (cost segment 18) should be more closely studied to determine whether all of its components are appropriately classified as administrative, and to understand why the attribution of this cost segment has also declined substantially. Docket No. R97-1, PRC Opinion, Appendix E, pp. 3-4; Docket No. R2006-1, PRC Opinion, Appendix E, p. 3.

(5) The attribution of depreciation costs (cost segment 20) has fallen by more than 25 percentage points since Docket No. R87-1. Docket No. R87-1, PRC Opinion, Appendix D, p. 3; Docket No. R2006-1, PRC Opinion, Appendix E, p. 3. One must wonder why.

(6) There has also been a drop in the attribution in the Supervisors and Technical Personnel cost segment (cost segment 2). Docket No. R97-1, PRC Opinion, Appendix E, p. 1; Docket No. R2006-1, PRC Opinion, Appendix E, p. 1.

(7) Moreover, if entry and receipt of competitive products are a significant justification for maintaining the extensive network of small post offices, then a closer look at the attribution of the costs of those post offices is needed.

c. Retiree health benefit costs that are incurred during current fiscal years should be attributed to the same extent that the labor costs which give rise to them are

attributed. See Docket No. R2005-1, PRC Opinion, ¶ 4027. Retiree health benefit costs incurred in the past fiscal year should also be attributed. Otherwise, current users of market-dominant products will be subsidizing costs incurred in the past by past users of competitive products.

QUESTION 9

All types of mail with separate sets of rates are “products” under PAEA, which defines a “product” as “a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.” 39 U.S.C. § 102(6).⁷ Unless there is a distinct and significant cost or market characteristic for a given type of mail, there should not be a different set of rates for that type of mail. Otherwise, a number of PAEA’s requirements, such as the undue preference/discrimination prohibition in section 403(c), would be violated.

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7. We do not agree that every rate cell within a set of rates for a type of mail is a separate product.