

ORDER NO. 56

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway; and
Tony L. Hammond

Review of Treasury Report

Docket No. PI2008-2

NOTICE AND ORDER PROVIDING AN OPPORTUNITY
TO COMMENT ON TREASURY REPORT

(Issued January 28, 2008)

I. INTRODUCTION

Section 401 of the Postal Accountability and Enhancement Act, Public Law 109-435 (PAEA), codified at 39 U.S.C. 2011(h), requires the Secretary of the Treasury (Treasury) in consultation with the Postal Service and an independent certified public accounting firm to develop recommendations for accounting practices and principles that will govern the operation of the Competitive Products Fund (CPF) and the determination of an assumed Federal income tax to be imposed on competitive products income. Treasury submitted its report and recommendations to the Commission on December 19, 2007.¹

¹ 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 19, 2007 (Report). The Report may be accessed from the Commission's website, <http://www.prc.gov>.

Section 2011(h)(2)(A) requires that interested persons, including the Postal Service, users of the mails, and an officer of the Commission, be given an opportunity to comment on the Report's recommendations in such manner as the Commission considers appropriate. To fulfill that obligation, the Commission is initiating this docket soliciting comments on both Treasury's recommendations, and specific questions posed by the Commission in response to the Report. Initial comments are due 60 days after publication of this Notice in the *Federal Register*. Reply comments are due 90 days after publication of this Notice in the *Federal Register*.

After review of the comments, the Commission will commence a rulemaking proceeding to develop regulations to satisfy the requirements of section 2011(h)(2), including establishing the accounting practices and principles to govern the operation of the CPF and rules for determining the assumed Federal income tax on competitive products income.² Interested persons will have an opportunity to comment on the proposed regulations.

II. STATUTORY FRAMEWORK FOR COMPETITIVE PRODUCTS' ACCOUNTING PRACTICES AND ASSUMED FEDERAL INCOME TAX

The Report fulfills Treasury's obligation under section 2011(h), which provides as follows:

(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

(l) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive

² Pursuant to section 2011(h)(2)(B)(ii), the final regulations are to be issued within 12 months of the date Treasury submitted its recommendations, or such later date as agreed to by the Commission and the Postal Service.

products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

39 U.S.C. 2011(h)(1)(A)-(B).

As relates to its task of developing recommendations pursuant to section 2011(h)(1), Treasury identifies five PAEA requirements applicable to competitive products:

1. The prohibition against subsidies by market dominant products (sections 3633(a)(1) and 2011(h)(1)(A)(II));
2. The requirement that each competitive product cover its attributable costs (section 3633(a)(2));
3. The requirement that competitive products collectively cover what the Postal Regulatory Commission determines to be an appropriate share of the Postal Service's institutional costs (section 3633(a)(3));
4. The obligation to annually compute an assumed Federal income tax on competitive products income (section 3634(b)(1)); and
5. The total assets of the CPF shall be the greater of the assets related to the provision of competitive products calculated under section 2011(h) or

the percentage of total Postal Service revenues and receipts from competitive products times the Postal Service's total assets (section 2011(e)(5)).

Report at 31.

III. TREASURY REPORT

To develop its recommendations, Treasury discusses both the Postal Service's current costing system and the cost accounting requirements for competitive products under the PAEA. Treasury explains that the Postal Service currently functions under an Activity Based Costing system (ABC system), which it describes as an economic costing system designed to "report (1) the marginal cost of each class of product and (2) the incremental cost of each class of product compared to all of the other classes of products serviced."³

Treasury indicates that under the current costing system, average volume variable costs serve as a proxy for marginal costs and further that the Postal Service estimates incremental costs based on the ABC system. Finally, Treasury notes that costs not attributed to postal products or services are classified as institutional costs.

Turning to the PAEA, Treasury's analysis of the statutory cost accounting requirements for competitive products begins with section 3633(a), which requires the Commission to promulgate regulations to:

1. Prohibit the subsidization of competitive products by market dominant products;

³ See *id.* at 3. The marginal cost (or unit volume variable cost) of a product is the cost of producing an additional unit of output. Marginal cost includes only costs that vary with the level of output and does not account for any fixed costs. If a product's price exceeds its marginal cost at current levels of production, a positive contribution is made toward paying the common costs of production. Incremental or avoidable cost of a product is the total cost incurred as the result of the provision of all units of that product. Incremental cost incorporates all variable and fixed costs specific to a particular product. Thus, if each product covers its avoidable cost then no single product is being cross-subsidized. For a more complete discussion of the incremental cost test, see William J. Baumol, John C. Panzar and Robert D. Willig, *Contestable Markets and the Theory of Industry Structure*, 351-356, 1982.

2. Ensure that each competitive product covers its attributable costs; and
3. Ensure that all competitive products shall collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.⁴

Based on these requirements and other PAEA provisions,⁵ Treasury concludes that “the only viable method to begin to address the PAEA requirements for competitive products is to establish a theoretical, regulatory reporting construct under which the [Postal Service] would ‘on paper only’ analytically segregate and identify the revenue and costs associated with the competitive products....” *Id.* at 4. Regarding the costs, Treasury recommends that the Postal Service attribute costs consistent with the Commission’s definition of competitive products. Treasury indicates, however, that more is required “to calculate a PAEA-compliant, corporate-like income statement or impute an assured income tax.” *Id.* To achieve these additional requirements, Treasury contends that the Postal Service’s cost system will need to be modified “to provide for the additional assignment of competitive products’ costs.” *Id.*

More specifically, Treasury suggests that, to satisfy the PAEA’s five statutory requirements, the modified cost system should have the capability to:

1. Report the costs for competitive products at a more granular level than they are currently;
2. Demonstrate that each competitive product (as defined under the PAEA) covers its attributable costs by pricing each competitive product above its volume-variable or marginal costs;

⁴ In Order No. 43, the Commission adopted, *inter alia*, rules governing rates for competitive products pursuant to section 3633. PRC Order No. 43, October 29, 2007.

⁵ As noted above, the other statutory requirements concern the computation of an assumed Federal income tax (section 3634(b)) and the “greater of” test (section 2011(e)(5)).

3. Demonstrate that competitive products are not individually cross-subsidized by the market dominant products by showing that each competitive product's revenues exceed its incremental costs;
4. Ensure that the combined revenues of the competitive products cover an appropriate share of the Postal Service institutional costs; and
5. Enable computation of an assumed Federal income tax on the income of the theoretical Postal Service competitive enterprise.

Id. at 4-5 (footnotes omitted).

Based on its analysis of the applicable PAEA accounting and tax-related provisions regarding competitive products, Treasury offers nine recommendations.

IV. ISSUES REGARDING CERTAIN TREASURY RECOMMENDATIONS

Treasury emphasizes that “[t]he accounting and income tax approaches described in [its Report] should serve as the starting points for such further discussions and decisions.” *Id.* at 1. The Report further points out that:

Given the size and scope of the [Postal Service's] operations as well as the complexity involved in meeting the PAEA accounting and other requirements, Treasury believes that any necessary changes to the existing [Postal Service] costing and other systems should be made incrementally and notes that some may need to be implemented over the long term.

Id. at 1-2.

The Report acknowledges that the ultimate responsibility and authority for issuing regulations concerning the PAEA accounting practices and CPF income tax requirements rest with the Commission. *Id.* at 1.

The Commission solicits comments from interested persons on any or all aspects of Treasury's Report. In addition, as set out below, the Commission has specific questions about certain Treasury recommendations and invites responses from interested persons to any or all of them. As noted above, initial and reply comments

are due 60 days and 90 days, respectively, after publication of this Notice in the *Federal Register*.

A. Treasury Recommendation 2

Treasury's second recommendation concerns the development of a theoretical competitive enterprise:

To enable a practical solution to be developed that could be validated by third parties, a theoretical or 'on paper only' enterprise — [Postal Service] competitive — should be analytically created by assigning to it an appropriate share of all [Postal Service] costs.

Id. at 7.

This recommendation reflects Treasury's conclusion that, based on the five PAEA statutory requirements for competitive products:

[T]he only viable method to begin to address the PAEA requirements for competitive products is to establish a theoretical, regulatory reporting construct under which the [Postal Service] would 'on paper only' analytically segregate and identify the revenue and costs associated with the competitive products — that is, to treat competitive products as if they were sold by a separate, theoretical enterprise or corporation that shares economies of scale and scope with the market-dominant products.

Id. at 4 (footnote omitted).

Treasury recognizes, but rejects, an alternative approach based on creation of a "true stand-alone competitive products entity." *Id.* at 7; *see also id.* at 6. Treasury

rejects this alternative because, *inter alia*, the cost modeling would be costly and take years to develop without likelihood of any corresponding benefits. *Id.*⁶

1. The Commission asks commenters to address Treasury's conclusion that a theoretical enterprise, rather than a stand-alone enterprise, should be constructed. Specifically, commenters are asked to comment on the assumptions, studies, and procedures that would be needed to establish the costs of a stand-alone competitive entity, the time and cost of implementing these studies, and the time and cost of achieving structural separation.
2. To what extent would economies of scale and scope be diminished if the Commission were to require the Postal Service to structurally separate its market dominant from its competitive lines of business?
3. Given the manner in which rates are established under the PAEA, *e.g.*, that market dominant products are subject to a price cap, would structural separation reduce the risk of competitive products being subsidized by market dominant products?
4. (a) If it is decided that establishing a theoretical competitive enterprise is appropriate, what is the appropriate basis for assigning operating and/or capital costs to the theoretical competitive enterprise?

(b) Is there a reasonable basis for directly assigning some types or categories of costs to competitive products based on underlying technologies and/or operating procedures? If so, what specific costs should be assigned in this way?

⁶ On January 16, 2008, the Federal Trade Commission (FTC) released its report entitled *Accounting for Laws that Apply Differently to the United States Postal Service and Private Competitors* (FTC Report). Among other things, the FTC Report discusses corporatization of assets associated with production of competitive products. FTC Report at 93-98. Commenters may address matters raised by the FTC Report as relates to the issues raised by Treasury's Report, *e.g.*, establishing a stand-alone competitive products entity.

- (c) Would there be a need to assign other costs not directly assignable (namely, joint and/or fixed costs), and if so, how should such costs be assigned?
- (d) Would worksharing affect the assignment of costs other than direct costs? If so, how?
5. What role, if any, should the concepts of profit centers and transfer pricing play?
6. Should any Universal Service Obligation costs be assigned to the competitive products category? If not, why not? If so, on what basis?
- B. Treasury Recommendation 3

Treasury's third recommendation concerns the cost system that should be used under the PAEA:

The volume-variable or marginal product costs reported by the [Postal Service] cost system should be used — after the product definition modification required by PAEA — to ensure that the competitive products cover their attributable costs. The reported incremental costs should be used to ensure that cross-subsidization of the competitive products by the market-dominant products is not occurring.

Report at 7.

This recommendation “relates to the derivation of marginal and incremental costs” with regard to the Postal Service’s costing approach. *Id.* Citing section 3631(b), which defines “costs attributable” to mean “the direct and indirect postal costs attributable to [competitive] product[s] through reliably identified causal relationships”, Treasury suggests that complying with this definition would not require the Postal Service’s current cost system to be modified other than to reflect products classified by the Commission as competitive. *Id.* Treasury also assumes that such attributable

costs would “form the appropriate basis for determining the marginal and incremental costs of the competitive products.” *Id.*⁷

In suggesting modifications to the cost system, Treasury interprets section 3633(a)(1) to mean that the incremental cost test should be applied to each individual competitive product. *Id.* at 3. In Order No. 26, the Commission addressed this statutory provision, endorsing the incremental cost test, but recognizing the need to employ its current test for cross-subsidies. PRC Order No. 26, August 15, 2007, ¶¶ 3040-43. The Commission interpreted section 3633(a)(1) to mean that the test for cross-subsidies applies collectively to competitive products, not individually to each product. See 39 CFR 3015.7(a).

1. Are the Postal Service's current cost systems, after modification for new products, sufficient for allocating costs between competitive and market dominant products? If not, what changes should be made to the cost systems?
2. Should the incremental cost test be applied to individual competitive products or to competitive products as a whole? If the former, what is the basis for determining whether a competitive product that fails the incremental cost test is being subsidized by market dominant or other competitive products?

C. Treasury Recommendation 5

The Treasury's fifth recommendation concerns the cost system that should be employed to assign costs between market dominant and competitive products:

The current [Postal Service] cost accounting system should be modified so that all of the costs for [Postal Service's] two lines of

⁷ Attributable cost is a concept developed by the Commission. Basically, it is equal to the marginal cost of a product plus some specific fixed costs, if any, attributed only to the production of that particular product, e.g., costs associated with Express Mail collection boxes and advertisements.

business (Market-Dominant and Competitive) can be assigned using cost drivers that capture the causal relationship between the lines of business and their applicable business costs. The remaining unassigned costs should be treated as institutional costs and an appropriate percentage of these institutional costs, which should be defined by the PRC by regulation, should be covered by the theoretical competitive enterprise.

Report at 9.

This recommendation appears to reiterate the principle that attributable costs should be allocated between market dominant and competitive products based on causal relationships. In addition, it urges that an appropriate share of institutional costs should be covered by the theoretical competitive enterprise. Treasury notes that, pursuant to section 3633(a)(3), the Commission has initially set the “appropriate share of institutional costs” test at 5.5 percent. Treasury also notes that the requirement that competitive products receive an appropriate share of institutional costs is echoed by section 3622(b)(9), a ratemaking objective applicable to market dominant products (“to allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.”)

1. A significant amount of Postal Service costs are currently classified as institutional, based on the use of cost drivers for cost allocation in rate analyses with most non-volume variable costs being assigned as institutional. Should any additional types of drivers and/or different types of cost attribution approaches be considered in determining costs for the competitive and market dominant lines of business?
2. The Report suggests that in addition to attributing product-specific costs to competitive products, the Postal Service should also attribute what Treasury calls line of business costs that are common to competitive products. *Id.* at 9. This suggestion could be interpreted to mean either that competitive line of business costs are costs shared by all competitive products or costs that may be shared by more than one, but not necessarily all, competitive products. The Commission asks commenters

to address the appropriate meaning of line of business costs, including the basis on which to distinguish between market dominant and competitive lines of business.

3. Does the Commission's determination of an "appropriate share of institutional costs" under section 3633(c)(3) also satisfy, at least implicitly, section 3622(b)(9)? If not, why not and on what basis should institutional costs be allocated between market dominant and competitive products?

D. Treasury Recommendation 6

Treasury's sixth recommendation concerns revenue reporting requirements for the theoretical competitive enterprise:

Subject to [Postal Service] system modifications to accommodate the new product definitions, the revenue numbers from the existing [Postal Service] financial systems should be used as a basis for both reporting the financial income and the taxable net income of the [Postal Service] Competitive theoretical enterprise. [Note: The revenues used to determine the assumed federal income tax might have to be adjusted, as appropriate, to conform to tax code treatment.]

Id.

The PAEA provides that Postal Service revenues should be appropriately measured. See 39 U.S.C. 3652(e) and Report at 9. Treasury concludes that the current revenue tracking system employed by the Postal Service is appropriate and does not require changes "unless the reclassification of postal classes and subclasses to...competitive products warrants them." *Id.*

1. Is the Postal Service's current revenue reporting system (modified to accommodate new product definitions) adequate for reporting the Postal Service's financial income and net taxable income?
2. If not, what modifications would be necessary?

E. Treasury Recommendation 7

Treasury's seventh recommendation concerns the development of an income statement:

A theoretical [Postal Service] Competitive enterprise income statement, or statement of operations along the lines of the 2007 statement of the operations shown in Figure 1, should be developed. The revenues should be derived from the current [Postal Service] revenue system and process as modified to reflect the new definitions of competitive products. The costs should be the outcome of applying Treasury's above-proposed cost accounting approaches.

Id. For purposes of calculating the assumed Federal income tax of the competitive products, Treasury states that an income statement or statement of operations should be developed as further addressed in recommendation 8.

1. Is what Treasury suggests sufficient for purposes of calculating an assumed Federal income tax on competitive products? If not, what standard (or format) should apply?
2. Please explain why any proposed additional information would be beneficial, and discuss whether the benefit associated with a more detailed statement outweighs the burden of any additional costs imposed by creating a more detailed statement.

F. Treasury Recommendation 8

Treasury's eighth recommendation concerns the calculation of an assumed Federal income tax:

The [Postal Service] should calculate the competitive products' assumed federal income tax using a simplified approach, preferably using a published, regularly updated, tax rate.

Id. at 22. As to the assumed Federal income tax on competitive products, section 3634(a) provides, in pertinent part, as follows:

(1) the term ‘assumed Federal income tax on competitive products income’ means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service’s assumed taxable income from competitive products for the year; and

(2) the term ‘assumed taxable income from competitive products’, with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

In section 2 of the Report, Treasury discusses the numerous considerations that influence the calculation of an assumed Federal income tax on competitive products income. *Id.* at 11-23. It identifies two general approaches, complex or simplified, that could be used for this purpose. *Id.* at 23-24. Treasury endorses the simplified approach, notwithstanding that it “would require some level of PAEA intent interpretation and scope determination by the appropriate governance bodies.” *Id.* at 24.

1. (a) Should a simplified approach be used for calculating an assumed Federal income tax?
- (b) If so, what tax rate should be used and why?
- (c) Should the tax rate be based on an analysis of Postal Service functions, markets, risks, and the performance by similar companies?

- (d) If similar companies are considered relevant, then how does one determine similarity?
2. Would use of a simplified approach require any changes to the Postal Service's cost systems and/or accounting procedures not addressed in the Report? If so, please elaborate.
 3. If a simplified approach should not be used, what approach should be used and why?

Section 3 of the Report (at 25-29) addresses difficulties with identifying and valuing assets and liabilities of the CPF, noting, for example, that efforts to determine each asset's theoretical enterprise origin and usage could be a significant undertaking that, in any event, might yield less than satisfactory results. *Id.* at 26. Treasury suggests four potential methods to attempt to assign assets to the theoretical competitive enterprise. *Id.* at 26-27. It notes that one of its methods is similar to the approach in section 2011(e)(5)(B). *Id.* at 27. Treasury observes that the PAEA does not contain a similar test for assigning liabilities. *Id.* at 29. Recognizing the significant tax implications raised by the various methods, Treasury suggests that “[a] possible approach to simplifying the assumed tax calculation to maximize net income after taxes and still meet the PAEA ‘shall be the greater of’ total assets CPF quantification test, is to use the theoretical [Postal Service] Competitive enterprise income before taxes and apply an appropriate, set effective tax rate.” *Id.*

Lastly, Treasury indicates that the CPF should be subject to a reasonable level of management and reporting oversight and, further that the reporting should be subject to independent review to ensure that it is fairly stated in all material respects. *Id.*

1. Does the PAEA allow a simplified approach to assigning assets to the competitive products fund for financial disclosure purposes and/or calculating an assumed Federal income tax?
2. If a simplified approach is allowed, should it be used?

3. Section 3 of the Report notes that the PAEA does not define assets, but that the PAEA's requirement to pay principal or interest on obligations issued for the provision of competitive products in section 2011(e)(5) supports the conclusion that it is permissible to define assets as net assets. The Commission asks commenters to address whether or not this is a reasonable assumption.
4. Does the PAEA require an assignment of liabilities to the CPF? If so, on what basis should they be assigned?
5. Should a full set of financial statements, including income statement, balance sheet and statement of cash flow, be prepared for the CPF?
6. What level of oversight should apply to the CPF?
7. What accounting principles should apply to the CPF?
8. What level of independent review of the Postal Service's CPF accounting and financial statements is sufficient and necessary under the PAEA?
9. What type (public or private) of entity would be best suited to perform that independent review?
10. Is there any information, not required to be reported under the PAEA, which should be included in the reports required under section 2011(h)(2)(B)(i)(III)?

V. PUBLIC REPRESENTATIVE

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates Patricia A. Gallagher to serve as the Public Representative, representing the interests of the general public. Pursuant to this designation, she will direct the activities of Commission personnel assigned to assist her and, will, upon request, provide their names for the record. Neither Patricia A. Gallagher nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is Ordered:

1. As set forth in the body of this Notice, Docket No. PI2008-2 is established for the purpose of receiving comments regarding Treasury's Report and recommendations as well as questions posed by the Commission in response to the Report.
2. Interested persons may submit comments no later than 60 days from the date of publication of this Notice in the *Federal Register*.
3. Reply comments also may be filed no later than 90 days from the date of publication of this Notice in the *Federal Register*.
4. Patricia A. Gallagher is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall cause this Notice to be published in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary