

Board of Governors of the Federal Reserve System, April 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

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FEDERAL TRADE COMMISSION

United States Postal Service Study

AGENCY: Federal Trade Commission.

ACTION: Notice requesting information and comment.

SUMMARY: On December 20, 2006, President Bush signed the Postal Accountability and Enhancement Act ("PAEA" or the "Act") into law. Congress intended the PAEA to increase competition and efficiency in the provision of mail service. The Act requires the Federal Trade Commission (the "Commission" or "FTC") to prepare and submit to the President, Congress, and the Postal Regulatory Commission ("PRC") a comprehensive report by December 20, 2007, identifying Federal and State laws that apply differently to the United States Postal Service ("USPS") with respect to the competitive category of mail and to private companies providing similar products. To help prepare this report, the Commission is requesting public comment on several issues.

DATES: Public comments must be received on or before July 2, 2007.

ADDRESSES: Comments should refer to "USPS Study, Project No. P071200" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and the original and two copies should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H (Annex F), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

Because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comment in electronic form, as prescribed below. Comments containing any material for which confidential treatment is requested, however, must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).¹

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with

Comments filed in electronic form (except comments containing any confidential material) should be submitted to the FTC by clicking on the following Web link: <https://secure.commentworks.com/FTC/USPSStudy> and following the instructions on the Web-based form. You also may visit <http://www.regulations.gov> to read this request for public comment and may file an electronic comment through that Web site. The FTC will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be addressed to James Cooper, Federal Trade Commission, Office of Policy Planning, 600 Pennsylvania Avenue, NW., Washington, DC 20580. E-mail: jcooper1@ftc.gov; Telephone: 202-326-3367.

SUPPLEMENTARY INFORMATION:

The Postal Accountability and Enhancement Act

On December 20, 2006, President Bush signed into law the PAEA, which is intended to increase competition and efficiency in the provision of mail service.² Under the PAEA, USPS products are divided into "market-dominant" and "competitive" categories.³ The Act lists market-

applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

² PAEA, Pub. L. 109-435, 120 Stat. 3198 (2006).

³ The Act defines the market-dominant category as "each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). The competitive products category is defined as consisting of "all other products." *Id.*

dominant and competitive products,⁴ but allows the newly formed PRC to change these lists "by adding new products to the lists, removing products from the lists, or transferring products between the lists."⁵

With respect to market-dominant products, the Act requires the PRC to establish "a modern system for regulating rates and classes"⁶ that satisfies a variety of objectives, including, *inter alia*, to maximize incentives to reduce costs and increase efficiency, to create predictability and stability of rates, and to maintain financial stability.⁷ Although the Act gives the USPS authority to set its own prices for competitive products (with a relatively brief public notification period),⁸ the PAEA requires the USPS to set these prices in accordance with regulations that the PRC will promulgate to: (1) Prohibit the subsidization of competitive products by market-dominant products; (2) ensure that each competitive product covers its attributable costs; and (3) ensure that all competitive products "collectively cover what the [PRC] determines to be an appropriate share of the institutional costs of the Postal Service."⁹ The Act creates a separate revolving fund—the Postal Service Competitive Products Fund—for revenues from the sale of competitive products;¹⁰ permits the USPS, subject to certain limitations, to borrow money and deposit the proceeds in the fund;¹¹ and subjects income from the sale of competitive products to the equivalent of federal corporate income taxes, by requiring the USPS to transfer that amount each year from the Competitive Products Fund to the Postal Service Fund.¹²

The Act further prohibits the USPS, and other Federal agencies acting in concert with it or on its behalf, from engaging in conduct—with respect to any product not covered by the statutory postal monopoly provision—that

⁴ The Act lists first-class mail letters and sealed parcels; first-class mail cards; periodicals; standard mail; single piece parcel post; media mail; bound printed matter; library mail; special services; and single-piece international mail, as market-dominant products. 39 U.S.C. 3621(a)(1)–(10). The Act lists priority mail, expedited mail, bulk parcel post, bulk international mail, and mailgrams as competitive products. 39 U.S.C. 3631(a)(1)–(5).

⁵ 39 U.S.C. 3642(a). The PAEA, however, forbids the PRC from transferring a "product covered by the postal monopoly" to the competitive products list. 39 U.S.C. 3642(b)(2).

⁶ 39 U.S.C. 3622(a).

⁷ 39 U.S.C. 3622(b).

⁸ 39 U.S.C. 3632.

⁹ 39 U.S.C. 3633(a).

¹⁰ 10 39 U.S.C. 2011.

¹¹ 11 *Id.*

¹² 39 U.S.C. 3634.

constitutes an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a), or otherwise violates the antitrust laws, as defined in the Clayton Act, 15 U.S.C. 12(a).¹³ In addition, the Act expressly prohibits the USPS from engaging in conduct that constitutes an unfair or deceptive act or practice, in violation of Section 5 of the FTC Act.¹⁴

FTC Study

The PAEA directs the Commission to prepare and submit to the President, Congress, and the PRC, a comprehensive report “identifying Federal and State laws that apply differently to the [USPS] with respect to the competitive category of mail * * * and to private companies providing similar products.”¹⁵ The report must include such recommendations as the FTC “considers appropriate for bringing such legal differences to an end,” and “in the interim,” to account—under the PRC’s regulations that will prohibit subsidization of competitive products—“for the net economic effects provided by those laws.”¹⁶ In preparing this report, the Act requires the Commission to consult with the USPS, the PRC, other Federal agencies, mailers, private companies that provide delivery services, and the general public.¹⁷

Accordingly, to assist with preparing this report, the Commission seeks relevant information concerning the questions that follow. These questions are designed to assist members of the public in focusing their comments, but should not be construed as a limitation on the issues on which public comment may be submitted. To facilitate the consideration of comments, responses to these questions should cite the numbers and subsection of the questions being addressed. All comments submitted should include any relevant data, statistics, or any other evidence upon which the comments are based.

With regard to the following questions “competitive products” refers to (1) priority mail; (2) expedited mail; (3) bulk parcel post; (4) bulk international mail; and (5) mailgrams.¹⁸ “Private competitors” refers to companies that

compete against the USPS in the provision of “competitive products.”

Questions

1. With respect to competitive products, please identify specific Federal laws, State laws, and local laws, regulations, ordinances, etc. (collectively, “legal requirements”) with which private competitors must comply, but with which the USPS is not required to comply. Please identify the specific source of the USPS exemption from each such legal requirement. Please provide estimates of both actual expenses, and administrative costs associated with compliance, that such legal requirements impose on private competitors.

2. Please discuss any benefits the USPS derives, in providing competitive services, from its legal monopolies over letter delivery and mailboxes. Specifically, discuss any economies of scope (i.e., cost advantages or other efficiencies that arise due to the provision of multiple products) that exist between the supply of market-dominant products and the supply of competitive products. In what ways, if any, do private suppliers of competitive products interconnect with the USPS system? Do any federal or state laws prevent greater interconnection with the USPS system? If so, please cite these laws and explain the ways in which they prevent greater interconnection.

3. Please identify any additional legal requirements that confer benefits upon the USPS that are not available to its private competitors.

4. With respect to competitive products, please identify specific legal requirements with which the USPS must comply, but with which private competitors are not required to comply, or any other legal constraints on the USPS’ operations that affect its costs. Please provide estimates of both actual expenses, and administrative costs associated with compliance, that such legal requirements and constraints impose on the USPS. Can any of these requirements or constraints be addressed apart from changes that would apply to the entire USPS? If so, please identify any requirements or constraints that might be removed only to the extent that they apply to competitive products. What laws would need to be changed to remove these requirements or constraints?

5. Please provide an estimate of how the requirements identified in responses to Question 4 affect the costs that the USPS incurs to provide competitive products, and the prices that the USPS charges for competitive products.

6. Please comment on the costs, benefits, and feasibility of requiring the USPS to account for the cost of complying with the legal requirements identified in responses to Question 1 in the cost of competitive products and in setting prices for competitive products. How should these costs be calculated and allocated between competitive and market-dominant products? Should the USPS be required actually to pay these costs or merely account for them when setting prices? If the USPS actually pays the costs associated with legal requirements, should it be required actually to comply with these legal requirements with respect to competitive products (e.g., pay local property taxes on buildings and vehicles to local governments)? Alternatively, should the USPS be required to pay the costs associated with these legal requirements to the U.S. Treasury or the U.S. Postal Fund?

7. Please describe how the USPS not being required to pay a return on the capital that the federal government contributed toward its competitive operations affects the USPS’ costs and prices of competitive products. Should the USPS be required actually to pay a return on the capital that the federal government contributed toward its competitive operations or merely account for such a cost when setting prices for competitive products? How should this return be calculated? How would this cost be allocated between competitive and market-dominant products? Should the USPS be required to pay this return to the U.S. Treasury or to pay this return to the Postal Service Fund?

8. Please describe how the USPS’ ability to borrow from the U.S. Treasury at preferential rates as compared with private sector companies affects the USPS’ costs and prices of competitive products. How should these borrowing costs be calculated and allocated between competitive and market-dominant products? Should the USPS be required to borrow at commercial rates or should there be another mechanism to equalize this cost differential? If so, how should it be calculated and should it be paid to the U.S. Treasury or the Postal Service Fund?

9. Please discuss the costs, benefits, and feasibility of requiring the USPS explicitly to pay state and local taxes on its competitive operations. How should these costs be calculated and allocated between competitive and market-dominant products? For private sector competitors, please describe and provide the costs associated with filing and paying state and local income,

¹³ 39 U.S.C. 409(e)(1)(A)–(B).

¹⁴ 39 U.S.C. 409(d)(2)(B).

¹⁵ PAEA § 703(a).

¹⁶ PAEA § 703(b). As noted above, 39 U.S.C. 3633 requires the PRC to promulgate regulations to prohibit the subsidization of competitive products by market-dominant products, and to ensure that prices charged for competitive products cover attributable costs and an appropriate share of “institutional costs.”

¹⁷ PAEA § 703.

¹⁸ 39 U.S.C. 3631(a)(1)–(5).

sales, and property taxes and the magnitude of these taxes. What laws if any would need to be changed to require the USPS to explicitly pay such taxes?

10. Please discuss the costs, benefits, and feasibility associated with requiring the USPS to establish a separate private entity to provide competitive products. What, if any, scope economies between its market-dominant products and its competitive products would be lost under this scenario? Please cite any relevant examples involving foreign countries in which a state-owned postal service established a separate private entity to provide competitive products.

11. Please discuss any other possible ways of ending the differences in legal requirements between the USPS and its private competitors with respect to the competitive category of mail, including the costs, benefits, and feasibility associated with these other possible approaches.

By direction of the Commission.

Donald S. Clark,

Secretary.

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GENERAL SERVICES ADMINISTRATION

[PBS-N01]

Notice of Intent to Prepare an Environmental Assessment for the Transformation of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant at Kansas City, Missouri

AGENCY: General Services Administration and National Nuclear Security Administration, Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The General Services Administration (GSA), as the lead agency, and the National Nuclear Security Administration (NNSA), as a cooperating agency, intend to prepare an Environmental Assessment (EA) to evaluate the potential environmental impacts associated with the following project: Transformation of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the NNSA Kansas City Plant.

The proposed action is for GSA to procure the construction of new facilities to house NNSA's non-nuclear component procurement and manufacturing operations. The new

facilities would be located approximately 8 miles south of the existing plant on a currently undeveloped site at the northwest corner of Missouri Highway 150 and Botts Road in Kansas City, Missouri. GSA would lease the facilities to NNSA, which would relocate its non-nuclear operations from the existing Kansas City Plant in the Bannister Federal Complex in Kansas City, Missouri, to the new facilities and conduct future operations in the new facilities. The relocation would involve moving approximately two-thirds of the existing capital and process equipment to the new facilities. Disposition activities of the existing NNSA facilities at the Kansas City Plant are not part of the current proposed action, and will be addressed in appropriate future environmental analyses. The Kansas City Plant is collocated on the Bannister Federal Complex with GSA and disposition activities will require coordination between both agencies.

The proposed facilities would cover more than 1 million square feet and provide over 2,000 surface parking spaces. The current facilities are approximately 3 million square feet. The proposed facilities would meet current and future production requirements for NNSA in a modern, cost effective, and flexible manner through reductions in the current facility footprint while significantly reducing operational, maintenance, security, and energy costs.

The EA also will evaluate the potential environmental impacts associated with alternatives to the proposed action, including:

- No Action, *i.e.*, continuing NNSA's non-nuclear operations in the existing Bannister Federal Complex facilities.

- Renovate the existing GSA office and warehouse space at the Bannister Federal Complex, relocate NNSA's non-nuclear operations to the renovated facilities, and conduct future operations in the renovated facilities.

- Renovate the existing GSA office space, demolish existing GSA warehouse space, and construct and operate a new manufacturing facility on the GSA portion of the Bannister Federal Complex.

- Demolish existing GSA office and warehouse space. Construct and operate new office and manufacturing facilities on GSA's portion of the Bannister Federal Complex.

Concurrent with the preparation of the Environmental Assessment, GSA and NNSA will determine the applicability of floodplain management and wetland protection requirements

(10 CFR Part 1022) and will publish a notice of proposed floodplain and/or wetland action as appropriate.

SUPPLEMENTARY INFORMATION: *Public Scoping Meetings:* The GSA and NNSA will hold a public scoping meeting for the Environmental Assessment on the Transformation of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant. The purpose of this Notice of Intent is to invite public participation at the scoping meeting and to request public comments on the scope of the EA, including the potential environmental impacts associated with the proposed action.

The public scoping meeting is scheduled as follows:

Wednesday, May 23rd, 2007
6:30 p.m. – 9:30 p.m.

Plaza Auditorium
Bannister Federal Complex
1500 East Bannister Road
Kansas City, MO 64131

Enter the Bannister Federal Complex by using Entrance 2, also marked Lydia Entrance, off Bannister Road. Enter the building through GSA Lobby 16. Please bring government-issued photo identification for entry into the building. Oral and written comments will be accepted at the public scoping meeting. In addition, GSA and NNSA will consider all written comments postmarked by May 30, 2007. For further information or to submit written comments please contact:

Carlos Salazar
GSA Regional NEPA Coordinator
1500 East Bannister Road, Room 2191
(6PTA)
Kansas City, MO 64131
(816) 823-2305
carlos.salazar@gsa.gov

Background: NNSA intends to adopt this EA for use as a basis for decisions regarding the further transformation and downsizing of non-nuclear production activities performed at its Kansas City Plant. This EA is being prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), and regulations implementing NEPA issued by the Council on Environmental Quality (40 CFR Parts 1500-1508), GSA (ADM 1095.1F), and to the extent not inconsistent with ADM 1095.1F, DOE (10 CFR Part 1021).

NNSA's non-nuclear operations include the procurement and manufacture of electrical, electronic, electromechanical, plastic, and mechanical components for the nuclear weapons program. Hazardous wastes are generated through general industrial processes and include acidic and