

The USPS SERVES US Act

The USPS Services Enhancement and Regulatory Viability Expansion and Sustainability for the U.S. Act (USPS SERVES US Act) makes needed updates and reforms to the postal regulatory process to ensure fairness and protections for customers captive to the USPS monopoly and hold the USPS accountable for efficiency and service performance by an empowered Postal Regulatory Commission with a clear mandate to protect the public interest.

The bill also contains two other important provisions: (i) the requirement that labor dispute (postal unions vs. USPS) arbitrators consider the Postal Service's financial condition in addition to other topics, and (ii) the provision for investment of part of the Postal Service Retiree Health Benefits Fund in index funds of private-sector securities.

SECTION BY SECTION

Section 1 – Modernizing postal regulations. Although it is 25 pages long, the bill has only one section titled as such (Section 1). The bulleted items below are all subsections (a) through (o) of section 1.

Would amend 39 USC 3622(d)(1) to make the price cap equal to the difference between the increase in CPI-U over the previous 12 months and a percentage set by the PRC to insure that USPS cost growth is less than increase in CPI-U. *This is a variety of X-factor. X-factors usually reduce the percent change in inflation to a lower figure. The theory of price-cap rate regulation is to decouple price from cost to motivate the regulated entity to increase its cost efficiency.*

Sec. 3622(a) allows the PRC to “revise” the ratemaking system. This amendment would forbid “revisions” that create a system with no price cap (i.e., a system inconsistent with sec. 3622(d)(1) which requires a price cap).

PRC is required to issue new regulations within 60 days of enactment.

If an annual compliance review shows that USPS failed to meet a service target (not service standard) the PRC may reduce rate authority for the affected product(s), effective in next rate proceeding. Under the Postal Service Reform Act of 2022, there are to be service targets whose success can be evaluated by the PRC under new 39 U.S.C. 3692. The new act does not, however, provide for substantial sanctions if these targets are not met. Section 3692(a)(2) contemplates evaluation of the previous year's success or non-success in the Annual Compliance Review but does not specify any consequences for non-success.

Makes change in nature of service cases eventuate in a PRC decision, not an advisory opinion. Decision to be given to Governors, who have 60 days to adopt or reject it; if they do not accept it, they would order effectuation of the proposed change in service or express approval of the plan or initiative the PRC had found implied such a change. Their action would be a reviewable final order. If the Governors do not act in 60 days, the PRC decision becomes a final order. If PRC sees that a USPS plan implies a change in service it may order USPS to show cause why a change in service proceeding is not needed; if PRC decides USPS has failed to show this it may start the proceeding itself. Currently, the Postal Service has control over whether a proceeding is to be held, even though – uniquely under PAEA – an advisory opinion on a change in service requires a trial-type hearing. The resulting PRC analysis and advice can be disregarded by the Postal Service, and frequently has been.

The amendment recognizes that the Commission is one stage farther removed from the practicalities of Postal Service operation than are the Governors. For that reason, the PRC decision is not made binding immediately, as a final order subject to judicial review. The requirement of transmittal to the Governors parallels the procedure for rate opinions contained in the 1970 Postal Reorganization Act. The Governors – rather than the Board of Governors – is specified because the Board includes the Postmaster General and Deputy Postmaster General, who are directly and officially responsible for the proposal, plan, or initiative addressed by the Commission decision.

Rate changes may not exceed one per 12 months.

Underwater classes: USPS may not be given additional rate authority for underwater classes unless (i) rate change in cost per piece does not exceed the annual limitation and (ii) USPS has measured service performance in preceding year and it has achieved target. The 2% “underwater” surcharge sanctioned by the Commission is unconditioned. In order to restrain the accumulation and compounding of these surcharges, add a limitation that there can only be a 2% underwater surcharge in any increase if: (a) unit attributable costs for underwater classes in the previous year increase no more than CPI-1% and (b) USPS measures and meets its service performance targets for such class in such previous years.

Objectives (sec. 3622) are required to be applied to each class or product individually. The PRC currently limits final rate case decisions to the question whether the planned rates obey the sec. 3622(d) price cap.

Retained earnings provided for by sec. 3622(b)(5) must come from efficiency improvements. The fundamental purpose of PAEA was to facilitate both financial stability and improved efficiency on the part of the Postal Service. To this end, objective (b)(5) of section 3622 included the ability to retain earnings in its concept of adequate revenue. To use price increases as the dominant (or only) means of securing earnings in excess of total cost conflicts with objective (b)(1), which contemplates improved efficiency and reduction of costs. Indeed, repeatedly raising prices as a means of securing retained earnings may be counterproductive: excessive prices lead to reduced mail volume as users migrate to rival media or abandon written communication altogether, and reduced volume raises delivery costs (which are largely fixed) as fewer pieces are delivered to each stop.

The PRC, in its ten-year review of the ratemaking system, drew a useful distinction between medium-term and long-term financial stability. It defined medium-term stability as the adequacy of total income to pay all costs, of whatever nature – including those not arising from operations. Long-term stability was defined as including also the ability to retain earnings which the PRC expected to be used for capital and operational improvements.

Office of Customer Advocate to be established, essentially as described in joint list of regulatory modernization suggestions. There should be a permanently-established, continuing staff unit within the PRC to represent the general public and in particular the customers of, and mail service or product providers for, the market-dominant classes and products, over which the Postal Service has either a statutory or practical monopoly. The existing system does not provide such representation. The extremely general language of the statute – that in all public proceedings the PRC is to appoint an “officer of the Commission who shall be required to

represent the interests of the general public” – and current PRC practice have led to the officer’s failing to advocate for postal customers, because –

1. The PRC now appoints an officer of the Commission ad hoc for each new case, leaving little or no continuity from one case to another and no staff unit with accumulated expertise.
2. The practice of ad hoc, impermanent appointment also undermines the officer’s independence, since the individual appointed will later have to cooperate with other staff colleagues who may react badly to his/her espousal of a novel or otherwise unwelcome litigating position.
3. An officer of the Commission appointed ad hoc and thus possibly inexperienced in the issues the case presents is likely to examine the case only for compliance with existing PRC rules and precedents.

The present situation also undermines the completeness of the PRC’s decisional record. Smaller organizations, no longer able to participate meaningfully in increasingly complex cases, are individually without a means of making their voices heard even if their views are important to an appropriate decision.

Complaint process (sec. 3662) to be improved by requiring motions to dismiss to be filed in 25 days from filing of complaint and requiring PRC to start proceedings “forthwith” if no motion is filed or if motion is denied. Sanctions (see amendments to sec. 3681) available if USPS or party aligned with it unreasonably delays proceedings. The PRC’s complaint process under sec. 3662 is burdensome, costly, takes too long, and lacks a fully effective remedy.

Excessive time. Under sec. 3662 the PRC is given 90 days to decide whether a complaint presents material issues of law or fact and to dismiss it if it does not. This three-month period is unnecessary; it can be accomplished in 45 days. Allowing for PRC deliberation upon a USPS motion and reply under current rules should consume no more than 45 days. The Postal Service could be given 20 or 25 days from the filing of the complaint to file its motion. Replies to motions are normally due in seven days, though the 45-day absolute limit would allow for some extra time if shown to be needed. If no motion to dismiss has been filed in the 20 or 25 days, the Commission should forthwith begin proceedings on the complaint.

Burden on complainant. Under current law, a mailer may not be reimbursed for having paid a rate subsequently found unlawful (sec. 3681). This rule discourages filing of potentially meritorious complaints, especially in view of the protracted PRC process. A remedy is available by amending sec. 3681 (discussed below). But among other reforms, that section should be amended to allow the PRC to award reimbursement in a sec. 3662 case if it finds that the Postal Service has unreasonably delayed the proceeding.

Nullification of public representative’s right to initiate a complaint. Under the PRC’s present practice of appointing a public representative (sec. 505) only when a procedural order opening a docket is issued, the statutory power of the public representative to initiate a complaint is nullified: no public representative exists until some other entity has filed a complaint and the PRC has issued its initial order. A potential remedy is the requirement of a continuing, established Customer Advocacy office, discussed elsewhere.

Sec. 3681 (non-recoupment for unlawful rate) amended by allowing PRC to reduce affected class’s rate authority until unlawful collection has been recouped. Available in annual compliance reviews and complaint

cases. In complaint cases, available if unreasonable delay is found. Section 3681 of title 39 forbids reimbursement of a mailer for a rate subsequently found unlawful. This blanket rule creates excessive and unfair burdens on mailers.

There are three situations in which the PRC may find a Postal Service rate unlawful: in a periodic price adjustment proceeding, in a complaint case under section 3662, and in the annual compliance review under section 3653. In a price adjustment case, the PRC under its current rules focuses on whether the rates cause a violation of the price cap rather than on whether they violate *any* of the sec. 3622(b) objectives. The price cap applies at the class level, and not to individual rates; if there is one rate the PRC believes causes the unlawfulness, the Postal Service can still (on remand from the PRC) remedy the problem by adjusting other rates within that class. Thus in a price adjustment case under current PRC rules there is no PRC finding that a particular rate is unlawful.

In a complaint case or an annual compliance review, the PRC can determine that some particular rate is unlawful. In a complaint case the available remedies are defined broadly, and the same remedies are available in an annual compliance review.

Would add a volume-encouragement objective to 3622(b), using language from the list of regulatory modernization suggestions. When PAEA was enacted in 2006, it may not have seemed necessary to include as an objective of the market-dominant ratemaking system the PRC was to establish the maintenance or improvement of mail volume. In 2006, volume was at its peak. Now, however, such an objective is clearly necessary – especially as the PRC has said that increasing volume is not an objective of the present system.

Would amend 3642 to require special attention to factors (c)(7), (8), and (11) in defining products, all as suggested in the regulatory modernization list.

Requires the PRC to develop its own volume estimation model independently of USPS.

Would require arbitrators appointed to resolve labor contract impasses to consider, in addition to other relevant topics, the present and as far as possible the future financial condition of the Postal Service.

Would require that a portion of the Postal Service Retiree Health Benefits Fund (PSRHBF) be invested in index funds like those employed by the Thrift Savings Fund. The Secretary of the Treasury is to consult with a PSRHBF investment committee comprising herself, the Chairman of the USPS Governors, the Chairman of the Federal Employees Thrift Investment Board, and two Presidentially-appointed members to represent USPS employees and annuitants. The investments are to be audited annually and the results reported to Congress. The PSRHBF Investment Committee may, no sooner than 5 years after enactment, raise the index-fund investment share of the Fund from the initial 25% to no more than 30%.