

THE USPS SERVES US ACT

The USPS Services Enhancement and Regulatory Viability Expansion and Sustainability for the U.S. Act (USPS SERVES US Act), H.R. 3004, 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 (PRC) 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 – Short title.

Section 2 -- Cost and efficiency reforms

Subsection (a)(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 ensure that USPS cost growth is less than the increase in CPI-U. This is a variety of the “X-factor” economic/regulatory approach to effective ratemaking. The theory of price-cap regulation, of which the X-factor is part, is to decouple price from cost to motivate the regulated entity to increase its cost efficiency. The PRC-set percentage must be at least 0.5% and may be more if the PRC fully explains the choice. The percentage difference may apply only to the current rate adjustment.

Section 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).

Subsection (b) The PRC is required to issue new regulations with 60 days of enactment.

Section 3 – Sanctions for certain failures of service. If an annual compliance review or a complaint case shows that USPS failed to meet a service target (not service standard) the PRC may, under the added section 3693, reduce rate authority for the affected product(s), effective in the 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 USC 3692. That new act does not, however, provide substantial sanctions if these targets are not met. Section 3692(a) contemplates evaluation of the previous year's success or non-success in the Annual Compliance Review but does not specify any sanctions for non-success. The provision defines what service target failures are subject to this sanction.

Section 4 makes changes in nature of service cases, to eventuate in a PRC decision, not an advisory opinion. Any such decision would be transmitted to the Governors, who would have 60 days to adopt it, or reject it by unanimous written decision; if they were to reject 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 were not to act within 60 days the PRC decision would become a final order. If the PRC finds 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 the PRC decides that USPS has failed to show this it may start the proceeding itself. Currently, USPS has control over whether a proceeding is to be held.

The amendment recognizes that the PRC is one stage farther removed from the practicalities of USPS operation than are the Governors. The requirement of transmittal to the Governors parallels the procedure for rate opinions 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 PRC decision.

Section 5 requires that rate changes may not exceed one per 12 months.

Section 6. Underwater (not recovering attributable cost) classes. USPS may not be given additional rate authority for underwater classes unless (i) cost per piece does not exceed the annual limitation and (ii) USPS has measured service performance in the preceding year and has achieved the target. The USPS calculation may not use proxies not approved by the PRC and the target employed in the measurement may not have been reduced from that of the preceding year.

Section 7. All objectives (section 3622) are required to be applied to each class or product individually in each rate proceeding. The PRC currently limits final rate case decisions to the question whether the planned rates obey the sec. 3622(d) price cap.

Section 8 requires that retained earnings provided for by sec. 3622(b)(5) must come from efficiency improvements; they may not come from simply raising prices. The fundamental purpose of PAEA (2006) was to facilitate both financial stability and improved efficiency on the part of USPS. To this end, objective (b)(5) of section 3622 included the ability to retain earnings in its concept of adequate revenue. This provision assures that any earnings retained are generated solely by efficiencies.

Section 9 requires that an autonomous Office of Customer Advocate be established by the Commission, with a continuing staff unit detailed for lengthy duration to represent the general public and the customers of, and mail service or product providers for, the market-dominant classes and products over which USPS has either a statutory or a practical monopoly. The existing system provides a much more general representation that is ad hoc and not autonomous.

The present situation also undermines the completeness of the PRC's decisional record. Smaller organizations, no longer able to participate meaningfully in increasingly complex and expensive

cases, are individually without a means of making their voices heard even if their views are important to an appropriate decision. The PRC cannot take adverse action against an employee of this unit because of his/her representation of the general public, except for cause.

Section 10 improves the complaint process (39 USC 3662) by requiring motions to dismiss to be filed in 25 days from the filing of the complaint and requiring the PRC to start proceeding “forthwith” if no motion is filed or if the motion is denied. Sanctions (see amendments to section 3681) are available if USPS unreasonably delays proceedings. The PRC’s complaint process under present sec. 3622 is burdensome, costly, takes too long, nullifies the statutory power of a public representative to initiate a complaint, and lacks a fully effective remedy.

Under present 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.

Under current law a mailer may not be reimbursed for having paid a rate subsequently found unlawful (sec.3681). A remedy is available by amending sec. 3681 (subsection (j)).

Section 11. Sec. 3681 (non-recoupment for unlawful rate) is amended by allowing the PRC to reduce an affected class’s rate authority until the unlawful collection has been recouped. Available in Annual Compliance Reviews and complaint cases; in complaint cases, also available if unreasonable delay is found. The blanket no-recoupment rule of sec. 3681 creates excessive and unfair burdens on mailers. (In rate change cases the price cap applies to a *class*, so there is no PRC finding that a particular *rate* violates the price cap.)

In a complaint case the available remedies are defined broadly, and the same remedies are available in an Annual Compliance Review (39 USC 3653(c)).

Section 12 would add a volume-encouragement objective to sec. 3622(b). 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 mail volume was at its peak. Now such an objective is clearly necessary, especially as the PRC has said that increasing volume is *not* an objective of the present system.

Section 13 would amend section 3642 to require special attention to factors (c)(7), (8), and (11) in defining products.

Section 14 would require the PRC to develop its own volume estimation model independently of USPS. This would provide better objective checking of USPS analysis and estimations.

Subsection (o) 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 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 PSRHB Investment Committee may, no sooner than five years after enactment, raise the index-fund investment share of the Fund from the initial 25% to no more than 30%.