Issue No. 17-22 / April 28, 2022

PostCom
Association For Postal Commerce

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BULLETIN
THE JOURNAL OF POSTAL COMMERCE

HIGHLIGHTS

» PostCom's Latest Filings

On April 25, PostCom's filed a response to a proposed Postal Service rule regarding allowable selvage on shipments in soft packaging, as published in the Federal Register on March 24.

On April 27, PostCom filed a response to a Postal Service petition asking the Postal Regulatory Commission (PRC) to reject our petition for a review of existing rate regulations in the wake of the passage of the US Postal Service Reform Act of 2022.

Both are appended to the end of the *Bulletin*.

» Opportunities Exist to Improve Delivery Point Management

A new report from the U.S. Postal Service Office of Inspector General (OIG) offers some timely insights into delivery point trends and management, given that growth in delivery points now contributes to the U.S. Postal Service's ability to raise rates. See Page 2.

» Top U.S. Postal Service Suppliers for FY 2021

David Hendel of Culhane Meadows conducted his annual survey of the 150 top USPS suppliers. Transportation companies again dominate the top rankings. See Page 4.

PRESIDENT'S CORNER

Notice and Comment

The President's Corner generally sticks to domestic issues because most of the recipients of the PostCom *Bulletin* are primarily focused on the US Postal Service and the larger industry that has been built up around it. From time to time however, developments in foreign postal affairs provide an illustrative contrast with domestic issues that deserves comment.

To that end, Thailand Post announced that it will be raising postage rates to address an increasingly costly universal service obligation. While that might not seem newsworthy, this will be the first such rate increase since 2004. In the US, we have had two major changes in postal legislation – each treated as a rare an epochal event – since the last rate increase in Thailand.

My first reaction upon hearing this news was concern for my Thai counterparts, who must have precious little to write about; eighteen years without a rate increase would probably mean the end of this column altogether. Though as I observe, and interact with, mailers preparing for a rapidly approaching market-dominant rate increase, that is a sacrifice I would willingly make.

We have used this space to decry the excessive and unnecessary rate increases of the last twelve months already. Beyond the magnitude of the price hikes, the decision by USPS to push through multiple price changes in a given calendar year is putting enormous strain on the systems and processes needed to ensure an efficient and orderly price change.

For most of modern ratemaking, price changes were on a roughly three-year cycle. The advent of a CPI-based price cap in the Postal Accountability and Enhancement Act (PAEA) in 2006 meant an annual pricing cycle with a prescribed notice requirement determined by the Postal Regulatory Commission (PRC).

In the period since, as commercial mail production and entry has become increasingly sophisticated and data intensive, the Postal Service and the mailing industry jointly developed processes for ensuring a reasonable transition during rate changes. An unintended consequence of the PRC undoing the price cap has been substantial stress on those processes.

The pasticcio of new rate authorities lavished upon USPS created incentives, not just for the USPS to maximize its monopoly power, but to accelerate the rate at which it does so. Recent upticks in the inflation rate have compounded those incentives.

Rate increases require lots of lead time. Once rate authority is determined, the rates have to be developed, approved by the Governors, and presented to the regulator. At that point, the clock starts ticking on the 90-day notice period required by PRC regulations.

If everything is correct, 90 days is not much time for commercial mailers and their suppliers, whose resources cannot necessarily be solely dedicated to rate changes, to make necessary software updates. On the other hand, if there are errata, or if necessary documentation is not available at the time of filing, the nominal 90-day notice period becomes a truncated and frantic scramble to the finish line, after which the cycle now renews.

True, the Governors have shown welcome flexibility in postponing several major structural changes in response to industry concerns, but if multiple rate changes per year is the new normal, the underlying processes – including how much notice is required – might need a more thorough reexamination. Nobody is asking USPS to wait eighteen years before the next price change, but there is absolutely no reason to not wait at least one.

Opportunities Exist to Improve Delivery Point Management

A new report from the U.S. Postal Service Office of Inspector General (OIG) offers some timely insights into delivery point trends and management, given that growth in delivery points now contributes to the U.S. Postal Service's ability to raise rates. Trends in New Delivery Points, RISC-WP-22-004

The report provides some interesting information regarding delivery point trends, including:

- Between fiscal years (FYs) 2011 and 2021, the number of active delivery points grew by 10 percent with growth greater in some areas than others. Growth in states like Texas, North Carolina, Arizona, and Utah outpaced the national average.
- Centralized delivery, including apartment mailboxes, cluster box units (CBUs), and other delivery points where multiple addresses are served at one location, grew by 23 percent between FYs 2011 and 2021. In addition, centralized delivery points became a larger proportion of all new delivery points, increasing from 56 percent to 68 percent.
- Between FY 2011 and FY 2021, active curbside delivery points increased from 53.2 million to 57.6 million, though they now make up a smaller proportion of all delivery points. The proportion of curbside delivery points tended to decrease in the south and west.
- Rural routes grew three times faster than city routes, adding 7.7 million delivery points over the last decade, compared with 5.1 million on city routes. In eight of the past 10 years, new delivery points on rural routes far exceeded those on city routes.
- Of the 13.2 million delivery points added between FYs 2011 and 2021, more than eight million – or 62 percent – were in suburban areas. The highest rate of growth occurred in pre-suburban areas (12 percent) and suburban areas

POSTAL PREVIEWS

May 3 - 5, 2022
Quad Postal Conference
Wisconsin, WI

May 15 - 18, 2022
National Postal Forum
Phoenix, Arizona

June 7 - 8, 2022
PostCom Study Day and Board Meeting
Alexandria, VA

June 13 - 15, 2022
ACMA National Forum
Washington, DC

July 12- 13, 2022
DTAC Meeting
Sussex, WI

July 26-27, 2022
Mailers Technical Advisory Committee
Washington, DC

September 26 - 27, 2022
Leaders in Logistics: North America
Arlington, VA
PostCom President Speaking

October 18 - 19, 2022
PostCom Study Day and Board Meeting
Alexandria, VA

October 19 - 20, 2022
DTAC Meeting
Alexandria, VA

October 19 - 21, 2022
Printing UNITED
Las Vegas, NV

October 25-26, 2022
Mailers Technical Advisory Committee
Washington, DC

October 25 - 28, 2022
EMA Spring Meeting
Savannah, GA

February 14 - 18, 2023
NAPM Annual Conference & DTAC Meeting
St. Pete's Beach, FL

(11 percent), while urban areas saw the lowest rate of growth (six percent).

Under the Postal Regulatory Commission's (PRC) new formula for USPS rate authority calculations, the Postal Service can receive rate authority for reductions in mail density per delivery point. To compute mail density, the Postal Service uses the number of possible delivery points on city, rural, and highway contract routes. The Postal Service does not consider the number of no-stat (delivery points that are not eligible to receive mail – for example, because the building was demolished) or removed delivery points in the pricing formula.

The OIG urged the Postal Service to provide sufficient transparency on the methodology used to calculate the number of delivery points in the network. In its annual report, the Postal Service publicly reports the number of possible delivery points it serves and the net change from the previous year. The annual net change includes newly added delivery points, and delivery points that already exist but changed status. The Postal Service collects data on the status and status change of every delivery point; however, public reporting only includes the total number of possible delivery points and not the count of newly added delivery points, or the number of delivery points that moved between the possible, active, and no-stat categories, the OIG pointed out. It added that the Postal Service does not track data on the number of delivery points permanently removed from the network, though it has the capability to do so.

Because the number of delivery points is a key factor considered in setting market dominant product pricing, the Postal Service should provide sufficient transparency on the methodology to calculate the number of delivery points in its network, the watchdog group said in its report.

The OIG sees other opportunities for the Postal Service to strengthen delivery point management processes, such as clarifying maintenance and repair responsibility for CBUs, establishing permanent growth manager positions across the agency, and standardizing the process across delivery units and districts. The OIG also thinks that the effective oversight of carrier edit books and increased transparency of delivery point statistics could help improve the accuracy of Address Management System (AMS) data.

Carrier edit books are a key part of adding, maintaining, and removing delivery points. The Postal Service recommends – but does not require – that edit books be submitted as changes are made, or once a month. However, according to the Postal Service, 58 percent of city edit books and 33 percent of rural edit books have gone more than 30 days without submission.

According to the OIG, the Postal Service is aware of the large number of unsubmitted edit books and is developing ways to make delivery point management more efficient for local post offices, including a June 2021 pilot program to streamline the edit book process for letter carriers and improve compliance.

Maintaining accurate data is important because the number of possible delivery points in AMS impacts the Postal Service's delivery operations planning, the quality of address-based products offered to customers, as well as its costs and revenue, the OIG pointed out.

Finally, the OIG noted the changes in the mail mix, involving more packages and fewer letters and flat items. While the Postal Service prefers CBUs, packages often don't fit in them, resulting in to-the-door deliveries. Installing new or larger parcel lockers and requiring a minimum number of parcel lockers in CBUs could reduce the number of door deliveries and reduce costs, the OIG concluded.

GUEST ARTICLES

Top U.S. Postal Service Suppliers for FY 2021

The following is an article written by David P. Hendel, Partner, Culhane Meadows PLLC. The article was published at www.postalcontractor.com on and is reprinted with permission. Views and opinions reflected the report are of the author's and do not necessarily reflect the views and opinions of PostCom.

Transportation companies again dominate the top rankings in the newly issued list of the top 150 U.S. Postal Service suppliers for fiscal year 2021. Eight of the top 10 contractors – and 14 of the top 20 – provide transportation services or equipment.

The Postal Service spent $18.4 billion on outside suppliers in FY 2021, an increase of $2.3 billion over last year. About half the total spend – $9.6 billion – went to transportation, an $800 million increase over last year. The Postal Service also spent $2.9 billion on supplies and services, and $5.8 billion on rent, utilities, and other facility expenses.

The top USPS supplier is again **FedEx Corporation**, which received nearly $2.2 billion. FedEx transports mail by air for the Postal Service and has stood atop the list since 2002. FedEx's current air cargo network contract with the Postal Service is set to expire on September 29, 2024.

The Postal Service's second largest supplier is trucking company 10 Roads Express, with $540 million in revenue. 10 Roads Express traces its roots back to 1946, and over the years has acquired a group of contractors that formerly operated independently. The company operates from 36 terminals across the country, has scheduled deliveries in 49 states, and operates thousands of company-owned tractors and trailers.

EnergyUnited Service, which pays the Postal Service's telecommunications and energy bills, ranked third at $400 million. Victory Packaging is the only other non-transportation supplier in the top ten. The company makes the packaging products that USPS provides to mailers and is seventh on the list.

OEM Systems LLC, which provides cargo vans, pick-ups, and other vehicles, appears for a second time in the top ten and ranked fifth, at $335 million.

The other transportation companies in the top ten are trucking company **Eagle Express Lines, Inc.**, ranked fourth, at $367 million; parcel giant **United Parcel Service of America, Inc**., ranked sixth at $290 million; truck broker **XPO Logistics, Inc**., ranked eighth at $202 million; air carrier **United Airlines, Inc.**, ranked ninth at $197 million; and postal-dedicated transportation supplier **Postal Fleet Services, Inc.**, ranked tenth at $196 million.

In all, the top ten suppliers accounted for $4.97 billion in FY 2021, about one-quarter of the agency's total spend for the year. The top 150 suppliers accounted for $11.8 billion, 64 percent of the agency's spend.

"The Postal Service's main job is delivering physical items, so smart transportation and logistics will always be key to the Postal Service's future," said David Hendel, a partner at Culhane Meadows PLLC and member of the firm's Government, Regulatory, and Compliance Group. "But what works in theory doesn't necessarily work in practice," he said. For example, the Postal Service recently abandoned its Dynamic Route Optimization program, which on paper was promising but when instituted led to higher costs and supplier disputes.

While transportation is vital, the Postal Service also depends upon a vast data processing and communications network to process and deliver 425 million mail pieces per day. The agency also maintains over 31,000 retail offices–that's more than twice as many retail outlets as Starbucks.

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Hendel has compiled the Top 150 list annually since 1999. The list is based on data received in response to Freedom of Information Act requests and seeks to consolidate entries for affiliated companies. The complete list of the Top 150 suppliers is available at www.postalcontractor.com, a website Hendel created that provides key background information on postal contracting. The list is also available on the Culhane Meadows website.

Top 10 USPS Suppliers, FY 2021				
2021 Rank	**Supplier Name**	**FY 2021 Total**	**Location**	**2020 Rank**
1	FedEx Corporation	$2,170,821,821.00	Memphis, TN	1
2	10 Roads Express*	$540,727,401.00	Carter Lake, IA	4,16
3	EnergyUnited Electric Membership Corporation	$400,284,731.00	Statesville, NC	2
4	Eagle Express Lines, Inc.*	$376,331,245.00	Homewood, IL	3
5	OEM, Systems LLC	$335,730,111.00	Okarche, OK	7
6	United Parcel Service of America, Inc* (UPS)	$290,820,637.00	Louisville, KY	8
7	Victory Packaging	$262,706,412.00	Northbrook, IL	6
8	XPO Logistics, Inc.*	$202,210,324.00	Charlotte, NC	42
9	United Airlines, Inc.	$197,231,249.00	Chicago, IL	15
10	Postal Fleet Services, Inc.	$196,692,807.00	Herndon, VA	5

POSTAL NEWS

USPS Looks To Hire 2,800 Front-Line Supervisors To Improve Staffing Across Network

FederalNewsNetwork The Postal Service is seeking to hire 2,800 front-line supervisors over the coming months, in an effort to improve staffing across its network. USPS is planning to hire supervisors to work in customer services, distribution operations, maintenance operations and transportation operations, and will host virtual career fairs through the summer. USPS is looking to fill Executive Administrative Schedule (EAS) Level 17 supervisory positions. Employees in EAS Level 17 positions earn a minimum annual salary of $57,650 and can earn up to $87,440 a year. This USPS hiring initiative marks the agency's latest effort to bring entry-level, front-line supervisors on board. USPS last August planned to fill about 900 EAS Level 17 supervisor positions ahead of the year-end peak holiday season.

Amazon Allows Members To Buy Directly From Merchants' Stores

Post&Parcel Amazon has launched Buy with Prime—a new benefit for Prime members that will extend the convenience of Prime shopping to online stores beyond Amazon.com. Buy with Prime will initially be available by invitation only for merchants using Fulfillment by Amazon (FBA) and will roll out through 2022 as merchants are invited to participate, including those not selling on Amazon or using FBA.Buy with Prime will allow millions of U.S.-based Prime members to shop directly from merchants' online stores with the trusted experience they expect from Amazon—including fast, free delivery, a seamless checkout experience, and free returns on eligible orders. Prime members will see the Prime logo and delivery promise on eligible products in merchants' online stores, which signals the item is available for free delivery, as fast as next day, with free returns.

Court Says Postal Service Cannot Just Mail It In

RegulatoryReview In its argument, the National Association of Postal Supervisors (NAPS) claimed that postal supervisors had been shortchanged by a Postal Service decision on pay rates. NAPS said that this discrepancy resulted from the Postal Service violating legal rules on how to set the supervisors' pay. NAPS sued the Postal Service over its 2016–2019 pay package. The trial court held in favor of the Postal Service, explaining that the Postal Service had not violated a "clear and mandatory statutory directive" because the Postal Reorganization Act of 1970 gave the Postal Service broad discretion to decide how best to determine pay differentials and consider private sector benefits and compensation. The appellate court reversed the trial court's judgment, finding that the Postal Service did not have discretion to choose any policy it liked or to implement it any way that Postal Service thought right. The court's message in essence was that just because an agency has discretion to determine how best to meet its statutory obligations does not mean it has discretion to ignore those obligations.

USPS POSTAL CUSTOMER UPDATES

FEDERAL REGISTER: Postal Regulatory Commission - Service Standard Changes, 24350–24351 [2022-08765]; **Postal Service -** Meetings; Sunshine Act, 24593–24594 [2022-09013]; Privacy Act; Systems of Records, 24207–24208 [2022-08566]

INDUSTRY ALERT: The U.S. Postal Service Board of Governors will meet May 5, 2022, in open session at Postal Service headquarters. The public is welcome to observe the meeting beginning at 4:00 p.m. ET in the Benjamin Franklin Room on the 11th floor. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration for participation in the public comment period is required. Speakers may register online. Registration for the public comment period, either in person or via teleconference, will end on May 3 at 5 p.m. EDT. Open session meetings of the Board of Governors are available on live audio webcasts .

INDUSTRY ALERT: Industry Alert: Officer Announcements–Vice President, Business Development and Vice President, Business Solutions Effective immediately, Postmaster General and Chief Executive Officer, Louis DeJoy has announced the appointments of Shibani S. Gambhir as Vice President, Business Development and Robert H. Raines Jr. as Vice President, Business Solutions. Both Gambhir and Raines Jr. will report to Chief Commerce & Business Solutions Officer and Executive Vice President, Jacqueline Krage Strako.

INDUSTRY ALERT: Covid-Related International Updates – Effective Friday, April 29, 2022, the Postal Service:

- Will *resume acceptance* of the following services destined to New Zealand: First-Class Package International Service (FCPIS); Commercial ePacket (CeP); International Priority Airmail (IPA) Packets and International Surface Air Lift (ISAL) Packets.
- Will *suspend* Priority Mail International (PMI) mailings to China. Items entered prior to 4/29/22, the Postal Service will transport to destination and delays are to be expected.

INTERNATIONAL NEWS

Belgium » Post&Parcel

PostNL has released a letter to customers explaining that new allegations have been directed at PostNL Belgium and asserts that "PostNL applies sound and social labour practices." "Belgian newspaper Het Laatste Nieuws today publishes new allegations directed at PostNL Belgium. Again, the allegations (that some delivery partners would still be working with minors) are based on anonymous sources and can't be verified. Similar allegations were made in November last year. None of our daily controls and checks with 100% coverage have given us any reason to think that this is actually happening. The veracity of anonymous sources and blurred videos can't be checked by us or by anyone else. We have called upon the journalist to share any relevant facts and report to the Justice department, which would be the right course to take."

Croatia » Parcel&Post

Croatian Post has agreed to participate in the International Post Corporation (IPC) Sustainability Measurement and Management System (SMMS) program. Croatian Post is the 20th postal operator to join this program, which is aimed at implementing sustainable business, increasing the use of renewable energy sources and increasing the number of delivery vehicles that run on alternative fuels. The SMMS program expands on the IPC's 2009-2019 Environmental Measurement and Monitoring System (EMMS) program, which focused on reducing carbon emissions. The latest program, SMMS, broadens IPC's remit to the seven sustainability focus areas most relevant for the postal sector: health and safety, learning and development, resource efficiency, climate change, air quality, circular economy and sustainable procurement. Since the launch of the first program, participating posts have reduced their collective yearly emissions by approximately 30%.

Finland » Valtion

On 21 April 2022, the Government submitted to Parliament a proposal for an act amending the Postal Act and for discretionary government grants for the delivery of newspapers.The aim is to ensure equal access to postal services as well as to secure the conditions for the five-day delivery of newspapers across Finland. According to the government proposal, the current five-day collection and delivery system included in the universal postal service would be replaced by a three-day system. In future, the universal service provider should collect and deliver postal items falling within the scope of the universal service at least on three business days a week, excluding public holidays. In addition, the universal service provider would be obliged to inform the households of the days of collection and delivery as well as to provide up-to-date information about the collection and delivery days on its website. In addition, the amendment would introduce a temporary government grant for newspaper delivery. The government grant would be available to areas lacking commercial early-morning delivery of newspapers and a fully comprehensive five-day delivery system. The universal service obligation in line with the Postal Act only applies to items of correspondence that have been paid for in cash, such as stamped letters, and postal packages sent from Finland abroad. Newspapers and periodicals do not fall within the scope of the universal service obligation referred to in the Postal Act.

Isle of Wright » IslandEcho

Electric cargo bikes will be used in a 2-month pilot scheme by the Isle of Wight Council for its internal mail runs. The council has approached People Powered Community Interest Company (CIC) to start the pilot project this month (April) and will see the company delivering internal mail runs between council sites across the Island. "E-cargo bikes are becoming increasingly popular for 'last mile' deliveries, especially in cities, and this pilot will allow us to evaluate the opportunities these offer the council by replacing the post room fuel driven vehicles and, in turn, reducing harmful emissions."

Latvia » BalticTimes

Latvijas Pasts plans to use its profit for 2020 worth EUR 2.398 million for development of postal infrastructure, according to the agenda of the Cabinet of Ministers meeting of April 26. The government will decide on the part of the 2020 profit to be paid in dividends. Funds worth EUR 2,397,870 will be used for development of the postal terminal network, optimization of routes, development of the Riga Sorting Center complex, improvement of IT solutions. In 2020, Latvijas Pasts posted EUR 94.13 million in turnover and EUR 4.21 million in profit, according to Firmas.lv. Latvijas Pasts is a state-owned company employing around 3,200 people.

Singapore » Post&Parcel

SingPost announced today that it is targeting net zero carbon emissions for its domestic operations by 2030, with its global business units following suit by 2050. This updated sustainability target demonstrates SingPost's commitment to support global efforts in keeping global warming to below 1.5°C. SingPost's domestic net zero target covers Scope 1 and 2 carbon emissions, while its global commitment encompasses Scope 1, 2 and 3 carbon emissions. Different decarbonisation pathways are being explored for the different markets across SingPost operations globally.

Thailand » NationThailand

The ministry said Thailand Post is likely to incur a loss as it had not requested an increase in postal service rates for 18 years despite the increase in operational costs due to inflation. "Citing the data between 2011 and 2020, Thailand Post has a social service burden of up to THB18.38 billion and it is likely to increase further," the ministry said. Thailand Post made a profit of THB3.82 billion in 2019, but it fell to THB385 million in 2020, and it incurred a loss of THB904 million in 2021. In its 2020 annual report, Thailand Post said the agency has to run more than 5,000 post offices to enable people to access postal services even though some of them generated low revenue.

MEMBER WEBINARS

May Member Webinar

May 10 at 3pm ET Registration

April 25, 2022

Director, Product Classification
U.S. Postal Service
475 L'Enfant Plaza, SW, Room 4446
Washington, DC 20260-5015
Via email: PCFederalRegister@usps.gov

RE: Proposed rule to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) by adding new subsections to establish parcel selvage standards and to clarify how to measure parcels prepared in soft packaging., FR Doc. 2022-05600 (March 24, 2022)

USPS Product Classification Director:

The Association for Postal Commerce ("PostCom") submits these comments on the Postal Service's Proposal to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) by adding new subsections to establish parcel selvage standards and to clarify how to measure parcels prepared in soft packaging, FR Doc. 2022-05600.

PostCom recognizes the need for the Postal Service to ensure that its operations are not unduly disrupted due to improperly prepared shipments in soft packaging. Operational disruptions increase costs, degrade service and may – in extreme circumstances – impact employee safety. In doing so, however, we suggest that the Postal Service pursue a balanced approach that properly reflects the effect that the proposed rule would have on shippers, the Postal Service, and the mailing public.

Fundamentally, we consider the proposed rule to have been written too broadly and to impose requirements that may be unnecessary in many circumstances. If implemented as proposed, it would impose significant costs on shippers, reduce the competitiveness of the Postal Service's shipping products and have potentially distorting impacts that appear to be out of proportion to the instant problem.

While the Notice alludes to "operational impacts" arising from certain uses of soft packaging materials, the precise nature of the impacts is not explained. Nor does the Notice provide information regarding the magnitude of the issue.

In any case, the rules are overbroad in that many packages subject to the new rule will, if entered at a DDU, bypass automated equipment altogether. Moreover, while ostensibly targeting excessive selvage, the proposed rule would also apply to padded envelopes with sufficient rigidity to obviate any concerns regarding excessive selvage.

We are also concerned that the proposed method for determining compliance may present significant practical issues in some cases. For example, clothing shipped in poly bags is inherently prone to shifting within the package, thereby rendering measurement of selvage highly subjective.

Whatever the nature and extent of the issues facing the Postal Service, the proposed rule would inflict significant harm on the industry and may create serious compliance and measurement challenges for the following reasons:

- The implementation timeline is not realistic. Commercial shippers have packaging supplies in inventory that would be rendered non-compliant by the proposed rule. Further, shippers whose automated packaging lines are designed according to current standards may need to reconfigure existing equipment and/or make capital investments to comply with the new rule if existing equipment cannot create compliant selvage.
- Some existing formats e.g. 5"X7" poly bags, are designed to work with the standard 4"X6" label format. Reducing the size of a poly bag to comply with the new rule may result in a bag too small to accommodate a standard label.
- The proposed rule is likely to result in a de facto rate increase as more packages are assessed non-standard fees.

In addition to costly impacts on industry, were shippers to comply with the new rule, the effect on postal operations and costs may be different than anticipated. For example,

- If shippers respond by reducing selvage to compliant levels, the resulting packages may be sufficiently small to create additional processing challenges.
- If shippers comply by converting to cardboard boxes, in addition to the costs imposed on mailers, the Postal Service will require a much greater amount of cube in both transportation and delivery vehicles and an increased number of packages that cannot be placed in existing mail receptacles. This will drive up both transportation and delivery costs, and increase the Postal Service's carbon footprint, in opposition to the Postal Service's stated objective of a more sustainable delivery network.

As written, we believe the proposed rule will have significant negative impacts on shippers and on the competitiveness of the Postal Service's shipping business that may greatly outweigh any benefits envisioned through its adoption.

As a general rule, PostCom supports the efforts of the Postal Service to improve operational efficiency and to promulgate rules to achieve those goals. However, in this case we believe that the proposed rule is overbroad and would have potentially damaging impacts that are not yet well understood. Therefore, we recommend that the Postal Service withdraw the instant notice and reassess the issue with appropriate input from customers and other stakeholders.

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Respectfully submitted,

/s/ Michael Plunkett

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

Petition for Rulemaking Docket No. RM2022-5

RESPONSE OF THE ASSOCIATION FOR POSTAL COMMERCE AND ALLIANCE OF NONPROFIT MAILERS TO MOTION TO REJECT PETITIONS FOR RULEMAKING
(April 27, 2022)

Pursuant to 39 C.F.R. § 3010.160(b), the Association for Postal Commerce ("PostCom") and the Alliance of Nonprofit Mailers ("ANM") (collectively, "Petitioners") respond to the United States Postal Service Motion to Reject Petitions for Rulemaking ("Motion"), filed April 20, 2022. The Postal Service misstates the relief requested by the Petitioners, mischaracterizes the arguments made by Petitioners, and ignores the obvious fact that its financial condition has significantly changed after the passage of the Postal Service Reform Act. As described in the Petition for Rulemaking, the fundamental premises underlying the Commission's rules granting the Postal Service authority to increase rates by more than the annual change in the Consumer Price Index have changed. While one can argue over *how much* impact these changes have on the Postal Service's financial condition, one cannot reasonably argue—as the Postal Service does—that no fundamental change has occurred. Thus, despite the Postal Service's protestations, a new notice-and-comment review of the market dominant ratemaking system is appropriate now. As the D.C. Circuit has noted, the "strongest case" for initiating a new rulemaking "is where a petition has sought modification of a rule on the basis of a radical change in its factual premises."[1]

[1] *Hadson Gas Sys., Inc. v. FERC*, 75 F.3d 680, 684 (D.C. Cir. 1996).

I. PETITIONERS ARE NOT REQUESTING RECONSIDERATION

The Postal Service fundamentally misrepresents the intent of the Petition. It claims Petitioners "merely call for a rollback of the outcome of Docket No. RM2017-3" and argues that the Commission could reject the Petition as an untimely motion for reconsideration of Order No. 5763.[2] Petitioners do not request this relief. Order No. 5763 was decided based on the record then before the Commission, informed by the laws that were then in place, and reflected the Commission's judgment regarding the appropriate course of action in light of those factors. While Petitioners believe the Commission made significant errors in that order and the orders preceding it, including Order No. 4257, the D.C. Circuit upheld the Commission's decision, and Petitioners do not seek to revisit it now. Furthermore, the Petition expressly notes that it does not seek changes to all the rules issued pursuant to Order No. 5763, including the workshare discount rules.[3]

Petitioners seek a new rulemaking because the Postal Service Reform Act radically changes the financial obligations of the Postal Service, eliminating by far the largest liability listed on the Postal Service's balance sheet. While the PSRA undermines the basis for the conclusions in Order No. 4257, and therefore eliminates the need for the above-CPI rate authorities of Order No. 5763, the relief Petitioners request does not require the Commission to revisit its conclusions in Docket No. RM2017-3. It is irrelevant to our Petition that "a past ratemaking system might have performed differently under circumstances from a future time,"[4] as the Postal Service's strawman states. The PSRA changes the Postal Service's *current* and

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2 Motion at 4; *id.* at 4 n.4.
3 Petition at 2, n.5.
4 Motion at 5.

future financial condition. Petitioners ask the Commission to open a rulemaking for the *present* ratemaking system to create new rules that reflect this change.

By the Postal Service's logic, any request for a rulemaking to reflect changing conditions could be interpreted as a request for reconsideration of a prior rule. In this case, it just so happens that Congress passed the PSRA soon after the Commission's new rules went into effect. But if the law had passed three years from now, would the Postal Service still consider the Petition a request for reconsideration? The Commission has a duty to revisit its rules when circumstances change—whether those circumstances change immediately after the rules have been enacted or years down the line. As is their right under the Administrative Procedure Act,[5] Petitioners ask the Commission to revise its rules to account for circumstances that exist now.

Indeed, a failure to open a rulemaking upon request when there has been a "fundamental change in the factual premises previously considered by the agency" constitutes a "compelling cause" for a court to overturn the agency's decision.[6] If "[e]ven a statute depending for its validity upon a premise extant at the time of enactment may become invalid if subsequently that predicate disappears," an agency may be "statutorily bound" to reexamine whether its rules continue to support the public interest when conditions change.[7] "[A]n agency may be forced by a reviewing court to institute rulemaking proceedings if a significant factual predicate of a prior decision on the subject (either to promulgate or not to promulgate specific rules) has been removed,"[8] such as when subsequent legislation has passed. The "strongest case" for initiating a new rulemaking "is where a petition has sought modification of a rule on the basis of a radical

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[5] *See* 5 U.S.C. §553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.")

[6] *Flyers Rights Educ. Fund, Inc. v. FAA*, 864 F.3d 738, 743 (D.C. Cir. 2017); *see also Envtl. Health Tr. v. FCC*, 9 F.4th 893, 903 (D.C. Cir. 2021).

[7] *Geller v. FCC*, 610 F.2d 973, 980 (D.C.Cir.1979).

[8] *WWHT, Inc. v. FCC*, 656 F.2d 807, 819 (D.C. Cir. 1981) (summarizing *Geller v. FCC*, 610 F.2d 973 (D.C.Cir.1979)).

change in its factual premises."[9] And when the agency is presented with "evidence that . . . the factual premises underlying its prior judgment have eroded," it must provide a reasoned explanation, beyond conclusory statements, to justify a decision to retain its regulations unchanged.[10] Because the PSRA radically alters the factual premises of the Commission's existing rules by eliminating the single largest financial obligation animating the rules, the Commission cannot dismiss the petition as simply an untimely request for reconsideration. It must affirmatively demonstrate why its rules still properly respond to the changed conditions.

The Postal Service further misstates the standard the Commission should apply when determining whether to grant the Petition, claiming that "[t]he operative question" is "whether there is some basis to conclude that the current system is not achieving the objectives to such an extent that the Commission needs to conduct a review in advance of the planned five-year review."[11] But that is not the statutory standard. Outside of the mandated regulatory review ten years after PAEA's enactment, the Section 3622(d)(3) standard for initiating a review is merely one of "appropriateness." And, we submit, the Commission would be hard-pressed to conclude that the passage of significant postal legislation – for the first time in 16 years and only the second time in over 50 years – that substantially improves the Postal Service's ability to "maintain financial stability"[12] without authorizing above-CPI price increases renders a new rate system review inappropriate.During such a review, the Commission "may" modify its ratemaking system or adopt an alternative system if it finds the system then in place is not achieving the objectives of the statute. But nothing in the statute binds the Commission to a

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9 *Hadson Gas Sys., Inc. v. FERC*, 75 F.3d 680, 684 (D.C. Cir. 1996); *see also Am. Horse Prot. Ass'n v. Lyng*, 812 F.2d 1, 5 (D.C. Cir. 1987) (explaining that a "refusal to initiate a rulemaking naturally sets off a special alert when a petition has sought modification of a rule on the basis of a radical change in its factual premises").

10 *Envtl. Health Tr.*, 9 F.4th at 903.

11 Motion at 5.

12 39 U.S.C. § 3622(b)(5).

subsequent five-year review absent a showing of the *extent* to which the current system is failing to achieve the statutory objectives and factors.

Moreover, the Commission's rulemaking power with respect to rates is not limited to conducting miniature 10-year reviews under § 3622(d)(3). The Commission has inherent authority to revise its ratemaking regulations whenever it finds it appropriate to do so. Section 3622(a) authorizes the Commission to revise its ratemaking regulations from time to time. The Commission is not bound to the regulations issued in Order No. 5763 until it makes an affirmative finding that the existing regulations are not achieving the objectives—it must have the authority to change its regulations to respond to changing conditions, and it certainly must have the authority to modify its regulations if it determines that doing so would *better* achieve the statutory objectives. This is especially the case where the Commission's task is to maintain regulations that balance numerous objectives. As the conditions impacting the achievement of each objective change, the Commission must adjust its regulations to maintain the appropriate balance between the interests of the Postal Service and mailers. The standard advanced by the Postal Service would unduly restrict the Commission's flexibility, locking it into its findings in Order No. 5763 until the system becomes so unbalanced that it cannot achieve the objectives at all.

II. THE COMMISSION COMMITTED TO REEXAMINE ITS RULES IF CONGRESS ENACTED POSTAL REFORM

As Petitioners explain, the Commission specifically contemplated revising its regulations if Congress enacted legislation impacting the Postal Service's financial condition. The Postal Service, however, suggests this recognition is a reason *not* to grant the petition.[13] Because the

[13] Motion at 8.

legislation was not "unforeseen," the Postal Service argues that there is no reason to revisit the rules.[14]

The Postal Service seems to want it both ways. In Docket No. RM2017-3, it urged the Commission to ignore pending legislation that would change its retirement obligations and the lack of consequences for failing to make required prefunding payments, arguing that "the Commission must consider all statutory obligations in order to properly address whether the market dominant ratemaking system has achieved the objectives of the PAEA."[15] Now, however, the Postal Service wants the Commission to ignore its statutory obligations and pretend that they are the same as they were prior to the enactment of PSRA.

The Commission explained in response to arguments made on this issue in Docket No. RM2017-3 that it was obligated to consider the Postal Service's statutory obligations—whether paid or not—and to ignore them would, among other things, "be inconsistent with Factor 14's intent that the Commission takes into account the policies of title 39."[16] The Commission affirmatively stated that "should Congress enact legislation that impacts the retirement liability of the Postal Service or fundamentally alters the structure of the Postal Service's retiree obligations, the Commission will reevaluate the additional retirement rate authority and consider equitable remedies that may be appropriate to ensure that mailers are protected."[17] It further committed to "promptly reassess any portions of its new and existing regulations that are impacted" by postal reform enacted before the scheduled 5-year review.[18]

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14 *Id.* at 7.

15 Order No. 4257 at 156 (paraphrasing and citing USPS comments).

16 Order No. 4257 at 158.

17 Order No. 5337 at 94; *see also* Order No. 5763 at 318 n.403 (expressly "commit[ing] to exercising its rulemaking authority" to reexamine its rules if Congressional action warrants).

18 Order No. 5337 at 243.

The PSRA "impacts the retirement liability of the Postal Service [and] fundamentally alters the structure of the Postal Service's retiree obligations." Petitioners are simply asking the Commission to keep its promise.

III. USPS ATTEMPTS TO MINIMIZE THE IMPACT OF THE PSRA

The Postal Service attempts to deflect from these clear statements of the Commission's intent by minimizing the impact of the PSRA on its finances and the underpinnings of the Commission's rules. But its arguments prevent a revisionist take on Docket No. RM2017-3 and contradict the Commission's statements in that docket.

First, the Postal Service argues that "the Commission did not identify the retiree health benefits . . . prefunding requirements that are eliminated in the PSRA as constituting the sole reason for its findings about Postal Service' financial health."[19] That is true, and Petitioners do not argue otherwise. But the Commission did identify the prefunding payments as the primary obstacle to the Postal Service's financial health, explaining that that "[t]he accumulated deficit of $59.1 billion includes $54.8 billion in expenses related to prefunding the RHBF."[20] The Commission continued this theme in the portions of Order No. 5763 cited by the Postal Service for its claim that "a number of factors" contributed to the Postal Service's financial problems.[21] In explaining why expectations that the Postal Service would continue to cover its costs were not met after the enactment of PAEA, Commission observed that "the PAEA . . . established a significant new obligation for the Postal Service" in the form of prefunding future retiree health benefits.[22] The Postal Service's total costs increased dramatically and diverged from CPI

[19] Motion at 8.
[20] Order No. 4257 at 171.
[21] Motion at 8 (citing Order No. 5763 at 5-7).
[22] Order No. 5763 at 5.

"largely due to recognition of the RHB prefunding costs for" FY 2007 as an expense.[23] Subsequent fluctuations in costs were also driven by these payments, and the payments contributed to the Postal Service's inability to accumulate retained earnings through sustained net income.[24]

Thus, while other factors played a role, the RHBF prefunding requirement was the single largest contributing factor to the Postal Service's inability to cover its total costs. The Postal Service's balance sheet reflects this situation—the $57 billion in liabilities for retiree health benefits are more than 3 times as large as the next largest category of liabilities, "Workers' compensation, nonconcurrent"; they represent 65% of current liabilities and nearly 47% of total liabilities; and they exceed the Postal Service's current assets.[25] While the Postal Service argues that its "overall financial condition must be kept in perspective," there is no perspective from which eliminating half an entity's liabilities does not fundamentally alter its financial condition. And this analysis does not address the $50 billion in savings the PSRA is expected to generate over the next 10 years with no further action from the Postal Service[26]—a bonus nearly equal to the deficit the Postal Service accumulated during the first 10 years of PAEA.[27]

Similarly attempting to distract from its demonstrated ability to increase its cash from $899 million at end of fiscal year 2007[28] to $23.9 billion at the end of fiscal year 2021 *even while operating under the CPI limitation*, the Postal Service claims this growth came from the "unsustainable" practice of defaulting on its legal obligations. But the PSRA empowers the

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23 *Id.* at 6.
24 *Id.* at 6-7.
25 FY 2021 Annual Report of the United States Postal Service, Form 10-k, at 57, available at https://about.usps.com/what/financials/10k-reports/fy2021.pdf.
26 *See* Petition at 6-7 (discussing Postal Service projections of savings from reductions in RHBF amortization obligations and Medicare enrollment requirements).
27 *See* Order No. 4357 at 171.
28 Order No. 4257 at 16 Table II-8.

Postal Service to continue to "default" on a significant portion of these obligations indefinitely. Nor is it a defense that liquidity is a measure of "short term" financial stability.[29] Medium-term and long-term stability are built from short-term financial stability. Short term, the Postal Service has massive cash reserves, more than enough to make years of the capital investments it claims to need.[30] The PSRA eliminates the primary source of alleged medium- and long-term instability while creating ongoing savings that the Postal Service can use to further improve its financial stability over any time period. Just as the Commission did not wait until the Postal Service was forced to stop operating to increase its rate authority, it need not wait until all of these savings have been realized to decrease that authority to reflect current and projected needs. In fact, the existing regulations were designed to provide a path to financial stability, not to immediately true-up costs and expenses. That path has gotten significantly smoother after the PSRA, and the Commission's regulations need not provide the Postal Service with the same level of cushion as before.

Finally, the Postal Service claims that "the PSRA by itself does not make the Postal Service financially stable … but [is] one piece of a large mosaic of necessary cost-saving and revenue-generating initiatives – including judicious use of the pricing authorities provided under the current regulatory system."[31] But the current regulatory system only props up the Postal Service's financial condition via rate increases; it does not require cost-cutting initiatives. If the Postal Service would like to point to specific cost-saving and efficiency-enhancing actions it has taken under the new ratemaking system or under the *Delivering for America* plan, it can do so

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29 Motion at 11.

30 *See* Industry Alert, "U.S. Postal Service Implements New First-Class Package Service Standards and Updates Priority Mail Service Standards," (April 18, 2022) available at https://postalpro.usps.com/node/10880 (identifying need for $40 billion in capital improvements over 10 years, or $4 billion per year); *see also* "Monthly Statement of the Public Debt of the United States," at 12 (showing that the Postal Service has $24.845 billion in operating cash as of March 31, 2022).

31 Motion at 10.

during the public comment period. In the meantime, captive mailers are being subject to the Postal Service's "judicious" pricing decisions *right now*, because the Postal Service has equated judiciousness with using "virtually all" of its above-CPI pricing authority in the two rate cases under the current rules.[32] The PSRA's passage significantly alters the analysis of whether above-CPI pricing authority is now needed for the Postal Service to maintain financial stability, whether the current system maintains just and reasonable rates, and what the effect of these rate increases are on the general public and business mail users, among other objectives and factors.[33]

IV. THE POSTAL SERVICE MISCHARACTERIZES ARGUMENTS

In addition to its misleading descriptions of the Commission's findings and conclusions in Docket No. RM2017-3, the Postal Service mischaracterizes the Petitioner's arguments. It claims the Petition argues above-CPI rate increases are "inherently 'excessive.'"[34] But Petitioners never make this claim. Instead, Petitioners argue that the PSRA enables the Postal Service to build on recent success "without unduly burdening mailers with excessive rate increases."[35] Especially now that the PSRA has reduced the overall revenue needed by the Postal Service to cover its costs, the above-CPI rate increases the current rules allow will lead to excessive rate increase because they allow the Postal Service to raise rates beyond what is needed to operate profitably. In addition, the above-CPI rate authorities obscure the Postal Service's inability to keep its cost growth in line with inflation (*i.e.*, the cost growth of the rest of the economy) and force mailers—who are dealing with inflationary pressures throughout their supply chains—to find cost savings elsewhere to make up for these increases. Notably, the

32 *See* Docket No. R2022-1, Market Dominant Price Change, at 1 (Apr. 6, 2022) ("The Governors have determined to use virtually all of this authority."); Docket No. R2021-2, Market Dominant Price Change, at 1 (May 28, 2021) (same).

33 39 U.S.C. §§ 3622(b)(5), (b)(8), (c)(3).

34 Motion at 6.

35 Petition at 9.

current rules do not simply allow "above-CPI" rate increases. They allow increases that far exceed the rate of inflation, and there is no limit to how much rate authority can be generated through the density adder. If the Commission continues to allow the Postal Service to increase rates by 5 percent or more above inflation twice per year, rates will quickly become "excessive" by any definition.

Relying on this same mistaken premise, the Postal Service further argues that even if PSRA allows it to achieve financial stability and satisfy Objectives 5 and 8, and there would be no need to reexamine the system because the D.C. Circuit rejected the idea that above-CPI increases are inherently excessive.[36] The Postal Service is again refuting an argument that Petitioners did not make, either in the Petition or before the D.C. Circuit. Regardless, the D.C. Circuit was satisfied that the Commission reasonably balanced the objectives of the statute when promulgating its regulations. But if the Postal Service can achieve financial stability *without* above-CPI rate increases, as the PSRA allows it to do, the Commission must revisit how its regulations balance these objectives. There is no longer a need to accept the decreases in rate stability and predictability create allowing multiple above-CPI rate increases per year creates. The regulations should focus more on maximizing incentives to reduce costs and increase efficiency now that PSRA has brought institutional costs back to a manageable level. And if the above-CPI rate authorities are not curtailed, rates will soon become unjust and unreasonable, as they will generate significantly more revenue than the Postal Service needs to cover its expenses. A balance of objectives that was reasonable when the Postal Service had $57 billion in liabilities it could not cover may not be reasonable now that those liabilities have been eliminated—regardless of whether above-CPI rate increases are inherently excessive or not.

[36] Motion at 12.

V. COMPLIANCE WITH COMMISSION RULES

Finally, the Postal Service's argument that Petitioners have not complied with the Commission's rules regarding initiation of rulemaking proceedings[37] is incorrect. Petitioners have clearly stated their specific proposal, and the Petition contains extensive discussion of how eliminating these rules will impact the Postal Service, the Petitioners (as representatives of mailers), and the mailing community. But in case there is any doubt, Petitioners seek the elimination of the density and retirement rate authorities contained at 39 C.F.R. ___ and ___, respectively. Eliminating these rate authorities will reduce the revenue available to the Postal Service, but this reduction is warranted because PSRA has significantly reduced, and will further reduce over time, the total costs of the Postal Service. The Postal Service has been able to increase its cash and pay down debt even while operating under the CPI cap; it should continue to be able to do so if the above-CPI rate authorities are eliminated. The Postal Service has sufficient cash at its disposal to begin making the capital investments it claims it needs to increase efficiency and generate even further cost savings—even by generous estimates, these investments amount to $4 billion per year over 10 years, though the Postal Service has never detailed its precise capital needs or explained how these investments will result in cost savings. Regardless, with strong management and focus on cost reduction, combined with continued revenue growth from competitive products, the Postal Service should be able to continue to improve its financial position without charging captive customers rates that increase faster than the rate of inflation.

The proposed rule changes will clearly benefit the mailing community, which is already paying more for less after the Postal Service reduced its service standards for numerous products.

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[37] Motion at 4.

Eliminating the density authority, in particular, will bring stability and predictability back to postal rates, allowing mailers to better budget and plan campaigns, thus encouraging volume growth. With lower rates, nonprofit mailers will be able to dedicate more of their resources to program activities and less to fundraising appeals, generating a better return on investment from their limited prospecting dollars. Moreover, captive mailers will be protected from monopoly pricing practices, the types of which have already resulted in two rate increases significantly above already historically high inflation in a single year.

VI. CONCLUSION

The PSRA, by eliminating a massive financial burden placed on the Postal Service, radically changes the factual premises underlying the above-CPI rate authorities created in Order No. 5763. Accordingly, the Commission must revise its rules to reflect this new reality.

Respectfully submitted,

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