

(Not Yet Scheduled for Oral Argument)

Case No. 18-1328

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOUGLAS F. CARLSON
Petitioner

v.

POSTAL REGULATORY COMMISSION
Respondent

UNITED STATES POSTAL SERVICE
PITNEY BOWES INC.
Intervenors

Petition for Review

Postal Regulatory Commission

BRIEF OF PETITIONER DOUGLAS F. CARLSON

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Parties and Amici. I am not aware of any parties, intervenors, or amici curiae in this proceeding besides the respondent, the Postal Regulatory Commission, and intervenors United States Postal Service and Pitney Bowes Inc.

Rulings Under Review. This petition for review concerns the portion of Postal Regulatory Commission (PRC) Order No. 4875 that relates to an increase in the price for single-piece, one-ounce, stamped, First-Class letters from 50 cents to 55 cents. The PRC entered this order on November 13, 2018, in PRC Docket No. R2019-1. This order and the accompanying library references are in JA 186–425.

Related Cases. I am not aware of any related cases currently or previously pending in this court or any other court.

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S. Rep. 108-31823

GLOSSARY OF ABBREVIATIONS

PAEA

Postal Accountability and Enhancement Act

JURISDICTION

The Postal Regulatory Commission (“Commission”) had jurisdiction under 39 U.S.C. § 3622 and the regulations issued pursuant thereto to review the United States Postal Service’s plan to raise postage rates in January 2019.

This court’s jurisdiction derives from 39 U.S.C. § 3663, which provides that “[a] person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia.” 39 U.S.C. § 3663. I am adversely affected or aggrieved by a final order, Commission Order No. 4875, which the Commission issued on November 13, 2018. I filed this petition 28 days later, on December 11, 2018.

Section 3663 further provides that “[t]he court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.” *Id.*

STATEMENT OF ISSUES

The Commission’s order raises the following issues:

1. Whether the Postal Regulatory Commission, in issuing regulations establishing its system for regulating rates and classes for market-dominant products, exceeded its statutory jurisdiction, authority, or limitations, or was short of statu-

tory right, by not requiring consideration of the objectives specified in 39 U.S.C. § 3622(b) and the factors specified in 39 U.S.C. § 3622(c) when reviewing Postal Service plans to raise rates in a rate-cap proceeding;

2. Whether the Commission abused its discretion or acted arbitrarily, capriciously, or otherwise not in accordance with law when it concluded, on the basis of the record before the Commission, that the Postal Service's plan to raise the price for one-ounce, stamped, First-Class letters from 50 cents to 55 cents "complied with the applicable statutory and regulatory requirements";

3. Whether the Commission's exercise of its statutory authority was reasonable and reasonably explained when the Commission issued its order concluding that the Postal Service's plan to raise the price for one-ounce, stamped, First-Class letters from 50 cents to 55 cents "complied with the applicable statutory and regulatory requirements";

4. Whether the increase in the price for one-ounce, stamped, First-Class letters from 50 cents to 55 cents complies with applicable statutory and regulatory requirements;

5. Whether the Postal Service's Notice of Market-Dominant Price Change ("Notice") satisfied the Commission's requirement in 39 C.F.R. § 3010.12(b)(7) for a "discussion that demonstrates how the planned rate adjustments are designed

to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)”;

6. Whether the Commission’s acceptance of the discussion that the Postal Service provided in its Notice as satisfying the requirement in 39 C.F.R. § 3010.12(b)(7) was plainly erroneous, inconsistent with the regulation, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

STATUTES & REGULATIONS

Statutes and regulations appear in an addendum bound with this brief.

STATEMENT OF THE CASE

I. Statutory Background

The Postal Reorganization Act of 1970 abolished the cabinet Post Office Department and created the modern United States Postal Service. Pub.L. 91-375 and 84 Stat. 719. This act created the independent Postal Rate Commission, which reviewed all changes to postal rates and mail classifications. The rate-setting process was slow and litigious, and interested parties had significant influence over rates and classifications. Although the Postal Service Board of Governors eventually could overrule a Postal Rate Commission decision, in practice, the commission’s decisions carried considerable weight.

As communication technology evolved and consensus grew about other shortcomings of the previous law, Congress passed the Postal Accountability and

Enhancement Act of 2006 (PAEA). Congress had many goals in enacting the new law. Central to this case are one objective, to provide the Postal Service pricing flexibility, and one main feature, a price cap. The PAEA changed the commission's name to Postal Regulatory Commission. The act provided additional regulatory authority to the Commission but changed or diminished its role in setting specific rates.

This case concerns the basic price for one-ounce, stamped, First-Class letters.¹ The Postal Service raised this price from 50 cents to 55 cents on January 27, 2019. The five-cent increase was the largest in history. JA 103. As a percentage, the 10-percent increase was the largest since 1991, when the rate increased from 29 cents to 32 cents. JA 103. Meanwhile, the prices that large mailers pay for presort letters increased only 0.97 percent. JA 202.

The PAEA defines First-Class letters as a market-dominant product. U.S. Code, Title 39, Part IV, Chapter 36, Subchapter I and § 3621(a). Within 18 months after enactment, the PAEA required the Commission to establish a “modern system for regulating rates and classes for market-dominant products.” 39 U.S.C. § 3622(a). Section 3622(b) specified that this system shall be designed

¹ The PAEA uses the term “rates,” the term that, for decades, described fees for postal services. After the PAEA took effect, the Postal Service began referring to rates as “prices.” In this brief, I use “rates” and “prices” interchangeably.

to achieve nine specific objectives, “each of which shall be applied in conjunction with the others”:

- (1) To maximize incentives to reduce costs and increase efficiency;
- (2) To create predictability and stability in rates;
- (3) To maintain high quality service standards established under section 3691;
- (4) To allow the Postal Service pricing flexibility;
- (5) To assure adequate revenues, including retained earnings, to maintain financial stability;
- (6) To reduce the administrative burden and increase the transparency of the ratemaking process;
- (7) To enhance mail security and deter terrorism;
- (8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail;
- (9) To allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.

Id. § 3622(b). Pricing flexibility is one of the nine objectives, to be applied in conjunction with others that are relevant to the five-cent increase in the basic postage rate, including predictability and stability in rates and just and reasonable rates.

In “establishing or revising” this system, section 3622(c) required the Commission to take into account 14 factors:

- (1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;
- (2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail

service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

(3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

(5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

(6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that —

(A) either—

(i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.

(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services;

(13) the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail; and

(14) the policies of this title as well as such other factors as the Commission determines appropriate.

Pricing flexibility appears again as one of 14 factors. Other factors relevant to a record-high five-cent increase in the basic postage price are the effect of rate increases on the general public, the available alternative means of sending and receiving letters and other mail matter at reasonable costs, and simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services. As I will discuss in detail in section I.A. of my argument, the five-cent price increase also runs afoul of policies of Title 39.

Section 3622(d) established a rate-cap system that allows the Postal Service and the Commission to raise rates up to an annual percentage equal to the Consumer Price Index for All Urban Consumers. 39 U.S.C. § 3622(d)(1)(A). In the current case, the Commission determined that the Postal Service had price adjustment authority of 2.497 percent. JA 208. The rate-cap system enables pricing flexibility, as the annual limitation applies to an entire mail class. 39 U.S.C. § 3622(d)(2)(A). Thus, the Postal Service has some discretion to determine how to allocate this price adjustment authority over the various rates within the First-Class

Mail class, such as the prices for stamped letters, metered letters, presort letters, post cards, and the surcharge for nonmachinable letters. However, the PAEA does not grant the Postal Service unfettered discretion, as the Commission’s system must consider all the pricing criteria in section 3622(b) and (c).

The Commission established its system by regulation at 39 C.F.R. Part 3010. Since this case involves an increase based on the annual rate-cap limitation, the proceeding is a “Type 1-A” rate adjustment. 39 C.F.R. § 3010.4(a). Therefore, the applicable regulations appear in Subpart B (39 C.F.R. §§ 3010.10–3010.12).

When the Postal Service plans to raise rates, the Commission’s system requires the Postal Service to include in its notice of rate adjustment “[a] discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).” 39 C.F.R. § 3010.12(b)(7). The notice also must include “[s]uch other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.” *Id.* § 3010.12(b)(12).

In a Type 1-A proceeding, “Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39

U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.” 39 C.F.R. § 3010.11(d). Notably, the Commission does not commit to evaluating whether the Postal Service’s rate adjustments actually are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) or properly take into account the factors listed in 39 U.S.C. 3622(c). Yet the Commission *may* consider these questions.

II. Record Before the Commission

On October 10, 2018, the Postal Service filed a Notice of Market-Dominant Price Change with the Commission (“Postal Service Notice”). JA 1. In response to the requirement in 39 C.F.R. § 3010.12(b)(7), the Postal Service devoted only a single paragraph to the five-cent, 10-percent increase in the stamp price:

The Postal Service is deliberately setting the Stamped Letters, additional ounce, and nonmachinable surcharge prices at round numbers divisible by five, to better achieve the “simplicity of structure” called for by Section 3622(c)(6). This should facilitate convenience for retail customers, for whom a straightforward, understandable pricing structure is more important than it is for commercial customers, who do not rely on stamps. Of course, moving to this structure (while still raising prices) requires that the Postal Service apply a substantial amount of this year’s pricing authority to Stamped Letters. The impact of this increase should be mitigated by the fact that the Postal Service is effectively reducing the prices for pieces heavier than one ounce and for nonstandard shaped pieces. [Footnote 10: Thus, for example, many holiday cards and invitations will be sent at a less expensive overall rate than before.] In addition, the Single-Piece Postcard price will remain the same at 35 cents. Importantly, the Postal Service intends to maintain this simplicity of structure for retail customers into future years, meaning that Stamped Letters may not see an increase in every price case (subject to the business conditions that obtain in coming years).

JA 8–9.

The Commission received 34 formal comments. JA 195. Many comments came from the general public. Sixteen of the 19 comments that can be reasonably construed to have addressed the 55-cent price opposed it. I submitted comments (“Carlson Comments”) focusing on the Postal Service’s arguments and demonstrating that they were unsupported and implausible. JA 95–105.

A. Convenience²

For most of history, including from 1991 to 2012, the price for one-ounce stamped letters has not been divisible by five cents. Yet the public never had any difficulty understanding the concept of 22, 34, or 42 cents to mail a letter. Second, a price of, for example, 52 cents would be as straightforward as a price of 55 cents. Third, a price of 55 cents would not be more convenient than a price of 52 cents. Even accepting the dubious policy premise that most customers would rather pay more to mail a letter than to handle pennies, most customers do not purchase only one stamp at a time. Instead, they purchase round quantities such as 20 or 100 stamps. Paying \$11.00 for a booklet of 20 stamps or \$55.00 for a coil of 100 stamps would be no more convenient than paying \$10.40 or \$52.00. Also, customers likely pay by debit or credit card for many, if not most, stamp purchase transactions. When customers do not pay in cash, price divisibility by five is

² See Carlson Comments at JA 97–100 for the discussion about convenience.

irrelevant to convenience. Lastly, customers who *do* buy one stamp at a time may represent an income demographic in which people need to count their pennies.

Even if, in yesteryear, the public somehow would have preferred to pay more for stamps in exchange for an amount that was divisible by five, forever stamps, introduced in 2007, have changed how the general public buys and uses postage. The value of a forever stamp is always equal to the current price for a one-ounce stamped letter. *Domestic Mail Manual* § 604.1.10. Customers typically buy a supply of forever stamps in quantities of 20 or 100 stamps, quantities that lead to round numbers for the total purchase. And they probably pay with debit or credit cards as well, so they do not care whether the purchase price is an even number. Customers use the same stamps whether the current price is 52 or 55 cents. A price of 52 cents is no less convenient than a price of 55 cents when customers are using forever stamps.

B. Simplicity of Structure³

The PAEA required the Commission’s system of regulating rates to consider “simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services[.]” 39 U.S.C. § 3622(c)(6). The Postal Service invented the claim of convenience for prices that are divisible by five and asserted that it promoted

³ See Carlson Comments at JA 100–02 for the discussion about simplicity of structure.

“simplicity of structure.” In doing so, the Postal Service misconstrued this clause. The correct focus is on the *structure* of rates and classifications, not the actual, individual rates or prices. Even assuming hypothetically that price divisibility by five could contribute to convenience, a price of 55 cents to mail a letter would not be *structurally* simpler than 52 cents. A price of 52 versus 55 cents would not affect the simplicity of an already complicated rate and classification schedule.

For contrast, my comments to the Commission identify some features of the rate structure that *do* implicate “simplicity of structure.” Under the current system, letters and large envelopes each pay a different first-ounce rate. These shape-based rates *complicate* the structure. In contrast, forever stamps *simplify* the structure by shifting customers’ focus from the price that applies today to the type of mail piece that they are sending. Forever postage stamps reduce the amount of information that customers need to know. Similarly, the Postal Service’s practice of charging the same price (currently 15 cents) for additional ounces for both letters and large envelopes *simplifies* the number of additional-ounce prices that customers must know. On the other hand, the 15-cent nonmachinable surcharge for letters that are, *inter alia*, square or not uniformly thick *complicates* the rate and classification schedule. Many customers are not aware of the surcharge, and parsing the definition of machinability adds complexity to the process of mailing a letter.

This review of some features of the rate and classification structure that actually do affect simplicity of structure demonstrates that a price of 52 cents to mail a letter versus 55 cents would not affect simplicity of the structure.

C. Effect of Rate Increases on the General Public⁴

Section 3622(c)(3) requires the Commission's system to consider "the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters[.]" The Postal Service glossed over this requirement, offering a completely unpersuasive excuse that implicitly acknowledges that the five-cent price increase will impose a major burden on the general public. The Postal Service asserted that the "impact of this increase should be mitigated by the fact that the Postal Service is effectively reducing the prices for pieces heavier than one ounce and for non-standard shaped pieces." JA 9. A footnote adds, "Thus, for example, many holiday cards and invitations will be sent at a less expensive overall rate than before." JA 9, fn. 10.

These decreases will not mitigate the overall effect of this increase. In FY 2017, the Postal Service processed 10.27 billion letters that paid the price for a one-ounce stamped letter. JA 379. Additional-ounce volume comprised 277.89 million of these letters. JA 379. Nonmachinable volume totalled 56.01 million

⁴ See Carlson Comments at JA 102–04 for the discussion about the effect of rate increases on the general public.

letters. JA 379. Combined, these rate decreases affect only 3.3 percent of total volume. They do not, in any meaningful way, “mitigate” the effect of this huge price increase on the general public and many business mailers.

D. Not Just and Reasonable⁵

The Postal Service’s failure to provide any factual or legal support for the five-cent increase in the stamp price also leads to the inescapable conclusion that this increase would not be “just and reasonable.” Section 3622(b)(8) requires the Commission’s system to “establish and maintain a just and reasonable schedule for rates and classifications[.]” This section does provide some latitude, noting that the “objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.” Thus, changes of unequal magnitude are not per se invalid.

However, they also are not per se valid. Section 3622(b)(8) and 39 C.F.R.

§ 3010.12(b)(7) require the Postal Service to provide *some* plausible rationale for a record-high increase in the price that most directly affects nearly every American who uses the postal system. The Postal Service also must explain how a large increase for the general public, 10 percent, and a small increase for presort mailers, 0.97 percent, maintains a just and reasonable *schedule* for rates and classifications. Instead, the Postal Service has provided only assertions that collapse under

⁵ See Carlson Comments at JA 104 for the discussion about just and reasonable.

scrutiny. Therefore, the price increase from 50 to 55 cents is not just and reasonable.

E. Future Years⁶

In its one-paragraph justification for a five-cent increase in the stamp price, the Postal Service stated that “the Postal Service intends to maintain this simplicity of structure for retail customers into future years, meaning that Stamped Letters may not see an increase in every price case (subject to the business conditions that obtain in coming years).” JA 9. This statement carries no legal weight and is not enforceable. Worse, this statement is a price increase disguised as reassurance. Once the price otherwise would reach 56 or 57 cents, the Postal Service likely will remind the public of this plan and raise the price to 60 cents to maintain divisibility by five. Therefore, far from providing comfort, this statement actually means that individuals and small businesses always may be paying more than they otherwise would have paid, and they will be paying it *sooner* than they otherwise would have. The Postal Service is not proposing a pay-now, save-later scheme centered on a 55-cent price. Rather, the Postal Service wants customers to pay more now and to pay more later.

⁶ See Carlson Comments at JA 104–05 for the discussion about future years.

III. Commission Order

The Commission’s analysis of the record-high five-cent increase in the basic stamp price comprised a mere three sentences in Order No. 4875: “Several commenters take issue with the Postal Service’s proposed pricing adjustments for First-Class Mail products — specifically Stamped Letters prices and the increased price differential between Stamped Letters and Metered Letters. However, subject to certain limitations, most prominently the price cap, the PAEA gives the Postal Service pricing flexibility within First-Class Mail. The Postal Service has complied with the applicable statutory and regulatory requirements.” JA 208–09.

The Commission’s brief discussion of a complex issue suffers several substantive and legal deficiencies.

First, the Commission likely considered only one of the statutory criteria in section 3622(b) and (c), pricing flexibility, and ignored the others.

Second, the order fails to articulate which “statutory and regulatory requirements” are “applicable,” how the Postal Service supposedly has complied with these requirements, which “certain limitations” besides the price cap constrain Postal Service price increases, whether the Commission considered public comments in reaching its decision that the Postal Service “complied with the applicable statutory and regulatory requirements,” or whether the Commission evaluated this price increase for compliance with section 3622(b) and (c).

Third, the Commission's order does not address why the Commission considered the Postal Service's single paragraph of dubious claims as "[a] discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)." 39 C.F.R. § 3010.12(b)(7). Nor does the order explain whether the Commission considered the merits of the Postal Service's discussion.

SUMMARY OF THE ARGUMENT

Commission Order No. 4875 is unlawful for four primary reasons.

First, the Commission did not consider all required statutory pricing criteria. Instead, the Commission focused on pricing flexibility to the exclusion of the other criteria.

Second, the record does not support the five-cent price increase.

Third, the Commission's system for regulating market-dominant rates does not require the Commission to consider the objectives in section 3622(b) and the factors in section 3622(c) when the Commission reviews a Postal Service plan to raise market-dominant rates. Although the Commission's system *allows* the Commission to consider the objectives in section 3622(b) and the factors in section 3622(c), the Commission did not, in fact, consider these objectives and factors when reviewing the Postal Service's plan to raise the price of a one-ounce,

stamped, First-Class letter from 50 to 55 cents. The Commission exceeded statutory jurisdiction, authority, or limitations or was short of statutory right within the meaning of 5 U.S.C. § 706(2)(C) when it designed and operated a system of regulating market-dominant rates and classifications that did not properly consider section 3622(b) and (c).

Fourth, even if the Commission's *system* did not exceed statutory jurisdiction, authority, or limitations and was not short of statutory right, the Commission's *order* was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). The Commission failed to consider an important aspect of the problem — namely, the pricing criteria in section 3622(b) and (c). And if the Commission's system of regulating market-dominant rates was lawful because it *allowed* the Commission to consider section 3622(b) and (c) issues, even if the system did not *require* this consideration, the Commission abused its discretion by not considering these issues when faced with an extreme price increase that obviously raised section 3622(b) and (c) issues. In addition, the Commission acted arbitrarily and capriciously because it failed to exercise its authority reasonably and to explain the exercise of authority reasonably. Finally, the Commission abused its discretion when it accepted the Postal Service's Notice of Market-Dominant Price Change even though the notice did not contain the information that the Commission's regulation requires.

ARGUMENT

According to the PAEA, “The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.” 39 U.S.C. § 3663.

Under section 706, a reviewing court shall hold unlawful and set aside agency actions, findings, and conclusions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A). In addition, this court shall “hold unlawful and set aside agency action, findings, and conclusions found to be * * * in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

Section 706 specifies the **standard of review** for all arguments herein. Order No. 4875 fails the tests in section 706 and steps one and two of a *Chevron* analysis.

I. THE COMMISSION’S DECISION IS NOT CONSISTENT WITH THE STATUTORY CRITERIA.

A. The Commission failed to consider required statutory criteria.

The Postal Service’s record-high increase in the basic stamp price implicated several statutory criteria. The Commission’s system and Order No. 4875 should have considered these criteria.

The rate shock inherent in this stamp price increase conflicted with objective 2, “predictability and stability in rates.” 39 U.S.C. § 3622(b)(2). The Postal

Service’s detail-free, promise-free statement of intent to maintain this pricing structure in future years implicated objective 2 as well. The requirement for rates to be “just and reasonable” also governs this price increase. *Id.* § 3622(b)(8). The “just and reasonable” standard may invoke a common regulatory standard, which the Supreme Court described as requiring “a balancing of the investor and the consumer interests.” *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 288 (1944). A five-cent increase in the stamp price is not in consumers’ interest. Other objectives may have been relevant as well, for or against the stamp price increase.

Similarly, several factors in 39 U.S.C. § 3622(c) were relevant. Front and center is factor 3, “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters[.]” *Id.* § 3622(c)(3). Factor 4, “the available alternative means of sending and receiving letters and other mail matter at reasonable costs,” deserved consideration. *Id.* § 3622(c)(4). Factor 6 is “simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services,” *Id.* § 3622(c)(6), the central factor on which the Postal Service relied, albeit unpersuasively.

Factor 14, “the policies of this title as well as such other factors as the Commission determines appropriate,” *Id.* § 3622(c)(14), compels a critical review of the price increase. As its basic function, the Postal Service is obligated to “provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people.” 39 U.S.C. § 101(a). A large price increase that disproportionately falls on the general public and small businesses undermines the Postal Service’s fulfillment of its basic mission. Section 101(d) provides that “[p]ostal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.” *Id.* § 101(d). Increasing the First-Class stamp price by 10 percent for the general public and small businesses while holding the price increase to a mere 0.97 percent for large presort mailers hardly is fair and equitable, as it targets the mailer constituency least able and likely to organize a challenge — the general public. Finally, “[i]n providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.” 39 U.S.C. § 403(c). Increasing the basic stamp price by 10 percent while capping the increase for large presort mailers at 0.97 percent discriminated against the general public and small businesses and granted a preference to large mailers. Since the

Postal Service did not provide a plausible rationale for the large increase, the discrimination and preference also are undue and unreasonable.

Compared to the typical, run-of-the-mill, inflation-based stamp price increase of one to two cents that the public has encountered annually in the years since Congress enacted the PAEA, the five-cent increase in the stamp price, and the policy therein of favoring large business mailers over the general public and small business mailers, warranted careful consideration of statutory criteria that Congress enacted to control Postal Service pricing behavior. The Commission ignored these issues.

B. Pricing flexibility is an important but not singular consideration.

Pricing flexibility may play a central role in the Commission's defense of its order. The Commission's system, when viewed in the context of the brief explanation in Order No. 4875, reflects the Commission's policy, and perhaps political, decision that pricing flexibility is of singular importance. If the Commission is correct, perhaps nothing else matters, and the Postal Service has total control over pricing.

Pricing flexibility is important. It appears as both an objective, 39 U.S.C. § 3622(b)(4), and a factor. *Id.* § 3622(c)(7). In addition, the caveat in objective 8 for "just and reasonable" rates states that this objective "shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within,

between, or among classes of mail[.]” *Id.* § 3622(b)(8). And the annual limitation under the price cap applies to an entire mail class, allowing the Postal Service flexibility to allocate price-cap authority among the various rates within First-Class Mail. *Id.* § 3622(d)(2)(A). To the extent that the importance of pricing flexibility is not clear from the statute, the legislative history confirms it. The Senate report urged, “In implementing this authority, the Postal Regulatory Commission should develop regulations that will give the Postal Service the maximum pricing flexibility possible consistent with the overarching financial and policy goals set forth in this legislation. Replacing one inflexible system with another will not address the needs of the postal community or ensure long-term survival of the American public’s postal system.” S. Rep. 108-318 at 8. Turning to the policy goals, the next paragraph of the report discussed the objectives now codified in section 3622(b), and the third paragraph acknowledged the factors in section 3622(c).

Thus, as important as pricing flexibility is, the statutory scheme unequivocally specifies that pricing flexibility is one of many criteria. Pricing flexibility is important, but its importance is not exclusive. Section 3622(b) and (c) require the Commission to apply *all* the objectives and factors. The Commission failed to recognize that pricing flexibility is not the only goal. Pricing flexibility does not confer pricing autonomy.

C. The record before the Commission does not support this price increase.

This court must evaluate the Commission’s order “on the basis of the record before the Commission.” 39 U.S.C. § 3663. The record does not support a five-cent, 10-percent increase in the basic stamp price. The Postal Service provided no justification that survives even superficial scrutiny. The increase obviously conflicts with several pricing criteria, as discussed in section I.A., *supra*. The decision to saddle the general public and small business mailers with a disproportionate share of the costs of operating the Postal Service is not fair and equitable and therefore is inconsistent with the policy in 39 U.S.C. § 101(d). And this large increase unduly and unreasonably discriminates against the general public and small business mailers and grants a preference to large mailers, in violation of 39 U.S.C. § 403(c).

Moreover, nearly all commenters who opined on the five-cent increase opposed it. Notwithstanding this majority opinion, three commenters addressed the issue and did not oppose it. Commenter Lisa Borden typed five sentences, apparently into a Commission Web form, and stated that the 55-cent price was “ok” before pivoting to a complaint about subsidies to Amazon, the main point of her comments. JA 94. More thoughtfully, the Association for Postal Commerce (“PostCom”) observed, “While PostCom does not object to this change, the need for a 5 cent rounding constraint seems somewhat anachronistic given that stamp

products such as booklets and sheets induce purchases in quantities that obviate the advantage of the constraint.” JA 88. In addition, “with consumer purchases increasingly migrating to online and non-cash transactions, the benefits of this new convention are unlikely to be substantial.” JA 88. PostCom then turned to its main concern, the “impact that this constraint could have on commercial prices going forward.” JA 88. PostCom noted that the Postal Service plan to maintain divisibility by five in the pricing of single-piece letters would cause large increases for commercial prices in some years and small increases in other years, such as now. JA 89. PostCom observed that “introduction of volatility into the pricing of market dominant products reduces the predictability of the current system.” JA 89. This point is important because “predictability and stability in rates” is a statutory objective that Congress required the Commission to design into its system. 39 U.S.C. § 3622(b)(2).

Finally, the Commission’s “public representative,” an employee of the Commission appointed to represent the interests of the general public, *see* JA 164 and 193, supported the five-cent increase. Reminiscent of a school student who does not know how to fill the teacher’s minimum page requirement for an assigned report, the public representative wrote three pages reciting the Postal Service’s plan and then expressed his agreement with the price changes, providing only two sentences explaining his reasoning. JA 156–59. First, he noted that the price

increase for a consumer who sends 20 letters per month would be “only \$1.” JA 159. Among the other shortcomings of this analysis, people on a low or fixed income might object to the qualifier “only.” Second, he claimed that it “makes sense to apply smaller increases to products more prone to electronic diversion,” an odd comment because single-piece First-Class letters are prone to electronic diversion. JA 159. The public representative did not recognize the comments that I had filed four days earlier. The general public deserved better representation than it received from the Commission’s so-called public representative. Between the public representative’s comments and his employer’s order, the Commission produced less than one page of analysis in response to the record five-cent increase in the basic price to mail a letter.

Even the Commission’s order itself did not assert that the record supported this increase. Therefore, this court should find that the record does not support a five-cent price increase.

II. THE COMMISSION’S SYSTEM AND ORDER FAIL UNDER THE ADMINISTRATIVE PROCEDURE ACT AND *Chevron* STEP ONE.

The Administrative Procedure Act provides that this court shall “hold unlawful and set aside agency action, findings, and conclusions found to be * * * in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C). Moreover, under a *Chevron* step one analysis, the first question is “whether Congress has directly spoken to the precise question at

issue. If the intent of Congress is clear, that is the end of the matter; for the court, * * * as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 2781 (1984).

In the current matter, Congress has spoken: The Commission’s modern system for regulating rates must consider the objectives in section 3622(b) and the factors in section 3622(c). The Commission’s cryptic order, however, does not explain whether the Commission determined that any of the criteria in section 3622(b) and (c), 39 U.S.C. § 101(a) or (d), or 39 U.S.C. § 403(c) constrain the Postal Service’s pricing flexibility under the price cap — and if they do, how the five-cent increase complies with these statutes. Quite the contrary, the Commission noted that the Postal Service has pricing flexibility and then dismissed commenters’ concerns with a declaration, in the most conclusory terms imaginable, that “[t]he Postal Service has complied with the applicable statutory and regulatory requirements.” JA 209.

The Commission’s system for regulating rates does not implement the congressional intent expressed in section 3622(b) and (c), 39 U.S.C. § 101(a) and (d), or 39 U.S.C. § 403(c). The system does correctly require, in the Postal Service’s notice of rate adjustment, a “discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b)

and properly take into account the factors listed in 39 U.S.C. 3622(c).” 39 C.F.R. § 3010.12(b)(7). Despite this promising start, the system does not require the Commission to *consider* any of these objectives or factors. *Id.* § 3010.11(d). A system that does not require the Commission to consider section 3622(b) and (c) in evaluating a Postal Service rate adjustment does not properly implement section 3622(b) and (c) — two subsections that are critical to protecting the public from pricing abuse by a monopolist government service provider. By ignoring section 3622(b) and (c) criteria in designing its system and instead focusing exclusively on pricing flexibility, the Commission exceeded statutory jurisdiction, authority, or limitations or was short of statutory right within the meaning of 5 U.S.C. § 706(2)(C).

The Commission’s system does *allow* the Commission to consider section 3622(b) and (c). Theoretically, this option could save the Commission’s system if the Commission exercised its discretion properly. However, even in this extreme case, the Commission apparently sat on its hands and did not consider any criteria in section 3622(b) or (c) except pricing flexibility. Therefore, in design and in practice, the Commission’s system is short of statutory right because it fails to consider all the criteria in section 3622(b) or (c) in evaluating a Postal Service request for a price adjustment. Ironically, elsewhere the Commission has acknowledged that the “purpose of the price cap statute is to prevent the Postal

Service from using its market-dominant power to charge customers unreasonably high prices.” *U.S. Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 751 (D.C. Cir. 2015). Nevertheless, the Commission’s system effectively nullifies the protections to the mailing public that Congress expressly enacted in section 3622(b) and (c). In these subsections, pricing flexibility is one of many criteria. These subsections and criteria operate in conjunction with, not subordinate to, the price cap in section 3622(d).

In sum, Order No. 4875’s approval of the five-cent increase in the basic stamp price is unlawful because the Commission’s system does not properly consider the criteria in section 3622(b) and (c), and the Commission did not properly consider those criteria in this case. The Commission lacked the statutory authority to ignore these criteria, so the Commission’s system and order fail the test in 5 U.S.C. § 706(2)(C). In addition, the Commission’s order and system fail the test in *Chevron* step one. While Congress spoke clearly, the Commission did not listen.

III. THE COMMISSION’S ORDER FAILS *Chevron* STEP TWO

If the PAEA somehow is considered to be silent or ambiguous on the applicability of section 3622(b) and (c) in a rate-cap proceeding, “the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” *Chevron*, 467 U.S. at 843, 104 S.Ct. at 2783.

A. The Commission’s order failed to consider an important aspect of the problem.

If this court determines that the Commission’s *system* does not fail *Chevron* step one, the court should find that *Order No. 4875* fails *Chevron* step two.

“Normally, an agency rule would be arbitrary and capricious if the agency has * * * entirely failed to consider an important aspect of the problem[.]” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mutual Automobile Insurance*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867 (1983). The Commission’s three-sentence discussion in *Order No. 4875* does not say much, but one inference is safe: the Commission did not properly consider all the criteria in 3622(b) and (c), which are critical to an evaluation of the Postal Service’s price increase. For this reason alone, the Commission’s order is arbitrary and capricious and an abuse of discretion.

B. The Commission abused its discretion by failing to consider the criteria in section 3622(b) and (c) when the record clearly called for this review.

Even though the Commission’s *system* does not require the Commission routinely to consider section 3622(b) and (c) in a rate-cap proceeding, the *system* allows the Commission to consider section 3622(b) and (c) issues. “Within 14 days of the conclusion of the public comment period the Commission will determine, *at a minimum*, whether the planned rate adjustments are consistent with the

annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings” [emphasis added]. 39 C.F.R. § 3010.11(d). A routine price-cap case with roughly across-the-board percentage increases may not raise substantial section 3622(b) and (c) issues. However, imposing a 10-percent increase in the basic stamp price for the general public and small businesses while holding the price increase to a mere 0.97 percent for large presort mailers, JA 202, clearly raises section 3622(b) and (c) issues. If the Commission’s system of regulating rates has any chance of properly implementing section 3622(b) and (c), the Commission should have exercised its discretion to consider section 3622(b) and (c) issues for the obviously extreme, non-routine price increase here.

Proper exercise of discretion is crucial because the PAEA prohibits reimbursement to mailers if they pay rates or fees that a court later determines to be unlawful. 39 U.S.C. § 3681. Therefore, the Commission has an obligation to set rates correctly the first time. The Commission plainly erred by remaining silent even when presented with this extreme price increase and commenters’ objections thereto. The Commission’s failure to act is an abuse of discretion.

C. The Commission’s order is arbitrary and capricious because the Commission’s exercise of its authority was not reasonable or reasonably explained.

Even if the Commission’s construction of the PAEA is permissible, the “Commission’s exercise of its authority must be ‘reasonable and reasonably explained’ in order to survive arbitrary and capricious review under the Administrative Procedure Act.” *U.S. Postal Service*, 785 F.3d at 750 (citing *Mfrs. Ry. Co. v. Surface Transp. Bd.*, 676 F.3d 1094, 1096 (D.C. Cir. 2012)); *see also Northwestern Corporation v. Federal Energy Regulatory Commission*, 884 F.3d 1176, 1181 (D.C. Cir. 2018) and 5 U.S.C. § 706(2)(A). I described at 16–17, *supra*, the many ways in which the Commission did not explain its reasoning. Order No. 4875 devoted only three sentences to a contested matter that will affect nearly every American postal customer. On its face, the order is unreasonable because the best inference from the explanation is that the Commission did not consider all the criteria in section 3622(b) and (c), so the Commission’s exercise of authority was not reasonable. Moreover, the order created far more questions than it answered. The unanswered questions described at 16–17, *supra*, belie any notion that the Commission “reasonably explained” its exercise of its authority.

The Commission may not discharge its “duty to explain itself” with mere “fleeting reference[s]” to, in the language of Order No. 4875, “applicable statutory and regulatory requirements.” *See U.S. Postal Service v. Postal Regulatory*

Commission, 842 F.3d 1271, 1273–74 (D.C. Cir. 2016), which concerned the Commission’s “fleeting reference” to a prior order. This court’s criticism applies to Order No. 4875. Moreover, as this court noted, “We have previously remanded adjudications to the Commission when we have found ‘that the Commission acted within its statutory authority’ but ‘the Commission’s explanatory gap [was] palpable’ with respect to its ‘inconsistent’ application of its rules or ‘the bounds of its authority.’” *U.S. Postal Service*, 785 F.3d at 755–56 (quoting *U.S. Postal Service v. Postal Regulatory Commission*, 676 F.3d 1105, 1106–08 (D.C. Cir. 2012)). Order No. 4875 is a textbook example of a decision that fails the requirement of a “reasonable and reasonably explained” exercise of authority.

D. The Commission abused its discretion by accepting the Postal Service’s deficient Notice.

The Commission’s regulation requires the Postal Service to include in its notice of rate adjustment “[a] discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).” 39 C.F.R. § 3010.12(b)(7). This regulation specifies an important quality standard: the discussion must *demonstrate* the required information. The Postal Service’s one-paragraph discussion is facially inadequate. Replete with implausible, unsupported, or obviously incorrect claims, the paragraph does not demonstrate anything, let

alone confirm that this price increase complies with statutory criteria. The public comments elaborate on the inadequacy of the Postal Service's discussion.

The Commission should have found that the Postal Service's notice of rate adjustment did not comply with 39 C.F.R. § 3010.12(b)(7). Alternatively, the Commission could have accepted the Postal Service's discussion and concluded, pursuant to 39 C.F.R. § 3010.11(d) and (f), that the extreme increase in the basic price to mail a letter failed to "help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)." 39 C.F.R. § 3010.12(b)(7). Instead, the Commission simply accepted the Postal Service's discussion without comment. This Commission action, or inaction, was an abuse of discretion.

STATEMENT OF RELIEF SOUGHT

This court should find that the record before the Commission did not support the five-cent increase in the price for one-ounce, stamped, First-Class letters.

This court also should find, under *Chevron* step one, that the Commission, in issuing regulations establishing its system for regulating rates and classes for market-dominant products, exceeded its statutory jurisdiction, authority, or limitations, or was short of statutory right, by not requiring consideration of the objectives specified in 39 U.S.C. § 3622(b) and the factors specified in 39 U.S.C.

§ 3622(c) when reviewing Postal Service plans to raise rates in a rate-cap proceeding.

Alternatively, this court should find, under *Chevron* step two, that the Commission abused its discretion or acted arbitrarily, capriciously, or otherwise not in accordance with law when it concluded, on the basis of the record before the Commission, that the Postal Service's plan to raise the price for one-ounce, stamped, First-Class letters from 50 cents to 55 cents "complied with the applicable statutory and regulatory requirements." This court also should find that the Commission's exercise of its statutory authority was not reasonable or reasonably explained.

Regardless of whether this court determines that the Commission's order was unlawful under *Chevron* step one or *Chevron* step two, this court additionally should find that the Postal Service's Notice of Market-Dominant Price Change did not satisfy the Commission's requirement in 39 C.F.R. § 3010.12(b)(7) for a "discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)" and that the Commission's acceptance of the discussion was plainly erroneous, inconsistent with the regulation, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

This court should remand this case to the Commission for the Commission to set prices for First-Class Mail that comply with section 3622(b) and (c) on the basis of the record before the Commission in Docket No. R2019-1.

Finally, I request that this court award costs to me pursuant to the Equal Access to Justice Act. *See* 28 U.S.C. § 2412.

Respectfully submitted,

/s/ Douglas F. Carlson

DOUGLAS F. CARLSON

Dated: February 22, 2019

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. because, excluding the parts of the document that Fed. R. App. P. 32(f) exempts, this brief contains 8,250 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because I prepared this document in the proportionally spaced font Times, point size 14, using Microsoft Word 2010.

/s/ Douglas F. Carlson

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I certify that I electronically filed this brief with the clerk of the court of the United States Court of Appeals for the District of Columbia Circuit on February 22, 2019, using the appellate CM/ECF system. Participants in the case are registered appellate CM/ECF users, and the appellate CM/ECF system will accomplish service.

/s/ Douglas F. Carlson

DOUGLAS F. CARLSON

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5 U.S.C.A. § 706

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to [sections 556](#) and [557](#) of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

28 U.S.C.A. § 2412

§ 2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in [section 1920](#) of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under [section 1914\(a\)](#) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in [sections 2414](#) and [2517](#) of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in [sections 2414](#) and [2517](#) of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness

representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in [section 504\(a\)\(4\) of title 5](#), the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection--

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) “party” means (i) an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in [section 501\(c\)\(3\) of the Internal Revenue Code of 1986 \(26 U.S.C. 501\(c\)\(3\)\)](#) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act ([12 U.S.C. 1141j\(a\)](#)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in [section 601 of title 5](#);

(C) “United States” includes any agency and any official of the United States acting in his or her official capacity;

(D) “position of the United States” means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) “civil action brought by or against the United States” includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to chapter 71 of title 41;

(F) “court” includes the United States Court of Federal Claims and the United States Court of Appeals for Veterans Claims;

(G) “final judgment” means a judgment that is final and not appealable, and includes an order of settlement;

(H) “prevailing party”, in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) “demand” means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in [subsection \(b\)\(1\)\(C\) of section 504 of title 5, United States Code](#), or an adversary adjudication subject to chapter 71 of title 41, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which [section 7430 of the Internal Revenue Code of 1986](#) applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under [section 1961\(a\)](#) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

39 U.S.C.A. § 101

§ 101. Postal policy

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

(b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

(c) As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States. It shall place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

(d) Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.

(e) In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

(f) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.

(g) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service.

39 U.S.C.A. § 403

§ 403. General duties

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under [sections 406](#) and [411](#) of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. The Postal Service shall serve as nearly as practicable the entire population of the United States.

(b) It shall be the responsibility of the Postal Service--

(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail service to meet the needs of different categories of mail and mail users; and

(3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

United States Code Annotated

Title 39. Postal Service (Refs & Annos)

Part IV. Mail Matter

Chapter 36. Postal Rates, Classes, and Services (Refs & Annos)

Subchapter I. Provisions Relating to Market-Dominant Products

39 U.S.C.A. § 3621

§ 3621. Applicability; definitions

(a) Applicability.--This subchapter shall apply with respect to--

(1) first-class mail letters and sealed parcels;

(2) first-class mail cards;

(3) periodicals;

(4) standard mail;

(5) single-piece parcel post;

(6) media mail;

(7) bound printed matter;

(8) library mail;

(9) special services; and

(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under [section 3642](#).

(b) Rule of construction.--Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

39 U.S.C.A. § 3622

§ 3622. Modern rate regulation

(a) Authority generally.--The Postal Regulatory Commission shall, within 18 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

(b) Objectives.--Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

- (1) To maximize incentives to reduce costs and increase efficiency.
- (2) To create predictability and stability in rates.
- (3) To maintain high quality service standards established under [section 3691](#).
- (4) To allow the Postal Service pricing flexibility.
- (5) To assure adequate revenues, including retained earnings, to maintain financial stability.
- (6) To reduce the administrative burden and increase the transparency of the ratemaking process.
- (7) To enhance mail security and deter terrorism.
- (8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.
- (9) To allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.

(c) Factors.--In establishing or revising such system, the Postal Regulatory Commission shall take into account--

- (1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;
- (2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;
- (3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;
- (4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;
- (5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;
- (6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;
- (7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;
- (8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;
- (9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;
- (10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that--
 - (A) either--
 - (i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.

(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services;

(13) the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail; and

(14) the policies of this title as well as such other factors as the Commission determines appropriate.

(d) Requirements.--

(1) In general.--The system for regulating rates and classes for market-dominant products shall--

(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

(C) not later than 45 days before the implementation of any adjustment in rates under this section, including adjustments made under subsection (c)(10)--

(i) require the Postal Service to provide public notice of the adjustment;

(ii) provide an opportunity for review by the Postal Regulatory Commission;

(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and

(E) notwithstanding any limitation set under subparagraphs (A) and (C), and provided there is not sufficient unused rate authority under paragraph (2)(C), establish procedures whereby rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, provided that the Commission determines, after notice and opportunity for a public hearing and comment, and within 90 days after any request by the Postal Service, that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

(2) Limitations.--

(A) Classes of mail.--Except as provided under subparagraph (C), the annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

(B) Rounding of rates and fees.--Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

(C) Use of unused rate authority.--

(i) Definition.--In this subparagraph, the term “unused rate adjustment authority” means the difference between--

(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

(II) the amount of the rate adjustment the Postal Service actually makes in that year.

(ii) Authority.--Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the

5 years following the year such authority occurred.

(iii) Limitations.--In exercising the authority under clause (ii) in any year, the Postal Service--

(I) may use unused rate adjustment authority from more than 1 year;

(II) may use any part of the unused rate adjustment authority from any year;

(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

(3) Review.--Ten years after the date of enactment of the Postal Accountability and Enhancement Act and as appropriate thereafter, the Commission shall review the system for regulating rates and classes for market-dominant products established under this section to determine if the system is achieving the objectives in subsection (b), taking into account the factors in subsection (c). If the Commission determines, after notice and opportunity for public comment, that the system is not achieving the objectives in subsection (b), taking into account the factors in subsection (c), the Commission may, by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives.

(e) Workshare discounts.--

(1) Definition.--In this subsection, the term “workshare discount” refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

(2) Scope.--The Postal Regulatory Commission shall ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless--

(A) the discount is--

(i) associated with a new postal service, a change to an existing postal service, or with a new work share initiative related to an existing postal service; and

(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

(B) the amount of the discount above costs avoided--

(i) is necessary to mitigate rate shock; and

(ii) will be phased out over time;

(C) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value; or

(D) reduction or elimination of the discount would impede the efficient operation of the Postal Service.

(3) **Limitation.**--Nothing in this subsection shall require that a work share discount be reduced or eliminated if the reduction or elimination of the discount would--

(A) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced or eliminated; or

(B) result in a further increase in the rates paid by mailers not able to take advantage of the discount.

(4) **Report.**--Whenever the Postal Service establishes a workshare discount rate, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that--

(A) explains the Postal Service's reasons for establishing the rate;

(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

(f) Transition rule.--For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and [section 407](#), as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.

39 U.S.C.A. § 3663

§ 3663. Appellate review

A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with [section 706 of title 5](#), and [chapter 158 and section 2112 of title 28](#), on the basis of the record before the Commission.

39 U.S.C.A. § 3681

§ 3681. Reimbursement

No mailer may be reimbursed for any amount paid under any rate or fee which, after such payment, is determined to have been unlawful after proceedings in accordance with the provisions of [sections 3662](#) through [3664](#) of this title, or is superseded by a lower rate or fee established under subchapter II of this chapter.

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sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

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AUTHORITY: 39 U.S.C. 503; 3622.

SOURCE: 78 FR 52704, Aug. 26, 2013, unless otherwise noted.

Subpart A—General Provisions

§ 3010.1 Definitions.

(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

(b) *Annual limitation* means:

(1) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to §3010.21;

(2) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to §3010.22; and

(3) In the case of a notice of a Type 1-C rate adjustment, the annual limitation calculated pursuant to §3010.21 or §3010.22, as applicable, for the most recent notice of a Type 1-A or Type 1-B rate adjustment.

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(c) *Class* means a class of market dominant postal products.

(d) *De minimis rate increase* means a rate adjustment described in § 3010.30.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(f) *Most recent Type 1-A or Type 1-B notice of rate adjustment*, when used in reference to a notice of rate adjustment for a class, means the most recent Type 1-A or Type 1-B notice of rate adjustment for that class.

(g) *Rate of general applicability* means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

(h) *Type 1-A rate adjustment* means a rate adjustment described in § 3010.4.

(i) *Type 1-B rate adjustment* means a rate adjustment described in § 3010.5.

(j) *Type 1-C rate adjustment* means a rate adjustment described in § 3010.6.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3010.7.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3010.8.

(m) *Unused rate adjustment authority* means:

(1) In the case of a Type 1-A or Type 1-B rate adjustment, the percentage calculated pursuant to § 3010.26; and

(2) In the case of a Type 1-C rate adjustment, the percentage calculated pursuant to § 3010.27.

[79 FR 33831, June 12, 2014]

§ 3010.2 Applicability.

The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing rate setting policies and procedures for market

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dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33831, June 12, 2014]

§ 3010.3 Types of rate adjustments for market dominant products.

(a) There are five types of rate adjustments for market dominant products. A Type 1-A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1-B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 1-C rate adjustment is authorized under 39 U.S.C. 3622. A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b)(1) The Postal Service may combine Type 1-A, Type 1-B, and Type 2 rate adjustments for purposes of filing with the Commission.

(2) The Postal Service may not combine a Type 1-C rate adjustment with any other type of rate adjustment. The Postal Service may file a Type 1-C rate adjustment and a *de minimis* rate increase contemporaneously, but the Type 1-C rate adjustment and the *de minimis* rate increase must be contained in separate notices of rate adjustment.

[79 FR 33832, June 12, 2014]

§ 3010.4 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment is an adjustment based on the annual limitation.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1-A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment

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for that class, subject to the expiration terms in § 3010.26(e).

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

§ 3010.5 Type 1-B rate adjustment—in general.

A Type 1-B rate adjustment is an adjustment that is based on the annual limitation and that uses unused rate adjustment authority in whole or in part.

[79 FR 33832, June 12, 2014]

§ 3010.6 Type 1-C rate adjustment—in general.

(a) A Type 1-C rate adjustment is an adjustment to a rate of general applicability that contains only a decrease. A rate adjustment that includes both an increase and a decrease in rates of general applicability is a Type 1-A or Type 1-B rate adjustment; it is not a Type 1-C rate adjustment.

(b)(1) Except as provided in paragraph (b)(2) of this section, a Type 1-C rate adjustment may generate unused rate adjustment authority, as described in § 3010.27.

(2) A Type 1-C rate adjustment filed immediately after a Type 3 rate adjustment (that is, with no intervening Type 1-A or Type 1-B rate adjustment) may not generate unused rate adjustment authority.

(3) The Postal Service may elect not to generate unused rate adjustment authority in a Type 1-C rate adjustment.

[79 FR 33832, June 12, 2014]

§ 3010.7 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

§ 3010.8 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

§ 3010.9 Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, <http://www.prc.gov>.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1-A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1-A filing. No explanation is required

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for variations involving smaller than predicted rate adjustments.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)

§ 3010.10 Notice.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1-A, Type 1-B, or Type 1-C rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

§ 3010.11 Proceedings for Type 1-A, Type 1-B, and Type 1-C rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1-A, Type 1-B, or Type 1-C rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

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(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.29.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment

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should address the subjects identified in paragraph (b) of this section and may address the subjects identified in paragraph (c) of this section.

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(k) A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment is in compliance with the annual limitation calculated under §3010.21 or §3010.22, as applicable; the limitation set forth in §3010.29; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013; 79 FR 33832, June 12, 2014]

§ 3010.12 Contents of notice of rate adjustment.

(a) A Type 1-A, Type 1-B, or Type 1-C notice of rate adjustment must include the following information:

- (1) A schedule of the planned rates;
- (2) The planned effective date(s) of the planned rates;
- (3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and
- (4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by the following information:

(1) The annual limitation calculated as required by §3010.21 or §3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI-U values, are listed with citations to the original sources.

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown.

(3) The percentage change in rates for each class of mail calculated as required by §3010.23. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by §3010.26 or §3010.27, as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown and all input values are listed with citations to the original sources.

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.

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(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(9) For a notice that includes a rate incentive:

(i) If the rate incentive is a rate of general applicability, sufficient information to demonstrate that the rate incentive is a rate of general applicability; and

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3010.23(e) or § 3010.24.

(10) For a Type 1-C rate adjustment, whether the Postal Service elects to generate unused rate adjustment authority.

(11) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(12) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information relied on to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) Whenever the Postal Service establishes a new discount or surcharge it does not believe is a workshare discount, it must include with its filing:

(1) An explanation of the basis for its belief that the discount or surcharge is not a workshare discount; and

(2) A certification that the Postal Service applied approved analytical principles to the discount or surcharge.

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(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3010.28. All calculations are to be shown, including citations to the original sources.

(f) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

Subpart C—Rules for Determining the Maximum Rate Adjustment**§ 3010.20 Calculation of maximum rate adjustment.**

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(b) Type 1-A and Type 1-B rate adjustments are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §§ 3010.21(a) and 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) For a Type 1-A notice of rate adjustment, the annual limitation for the class; and

(2) For a Type 1-B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3010.29.

(e) There is no limitation on the amount of a rate decrease contained in a notice of Type 1-C rate adjustment.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

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§ 3010.21 Calculation of annual limitation when Type 1-A or Type 1-B notices of rate adjustment are 12 or more months apart.

(a) The monthly CPI-U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982-84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed 12 or more months after the most recent Type 1-A or Type 1-B notice of rate adjustment, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average) - 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

§ 3010.22 Calculation of annual limitation when Type 1-A or Type 1-B notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI-U values needed for the calculation of the partial year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982 - 84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed less than 12 months after the most recent Type 1-A or Type 1-B notice of rate adjustment, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI-U index is calculated by summing the 12 most recently available monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) - 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

§ 3010.23 Calculation of percentage change in rates.

(a) *Definitions.* In this section:

(1) *Current rate*—(i) *In general.* Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, the term *current rate* means the rate in effect when the Postal Service files the notice of rate adjustment.

(ii) *Seasonal and temporary rates.* When used with respect to a seasonal or temporary rate, as described in paragraph (a)(2) of this section, the term *current rate* means the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time the Postal Service files the notice of rate adjustment.

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(iii) *Exception.* When used with respect to a rate cell that corresponds to a rate incentive that was previously excluded from the calculation of the percentage change in rates under paragraph (e)(1) of this section, the term *current rate* means the full undiscounted rate in effect for the rate cell at the time of the filing of the notice of rate adjustment, not the discounted rate in effect for the rate cell at such time. For example, if a rate incentive provides a 5-cent discount on a 25-cent rate and the Postal Service previously elected to exclude the rate incentive from the calculation of the percentage change in rates, the Postal Service may choose to begin including the discounted rate in its calculation of the percentage change in rates. If the Postal Service makes that choice, the current rate for the discounted rate cell will be 25 cents (the full undiscounted rate).

(2) *Rate cell.* The term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(3) *Rate incentive* means a discount that is not a workshare discount and that is designed to increase or retain volume, improve the value of mail for mailers, or improve the operations of the Postal Service.

(b) *Calculation—(1) Type 1-A and Type 1-B rate adjustments.* For a Type 1-A or Type 1-B rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(2) *Type 1-C rate adjustments.* For a Type 1-C rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated by amending the workpapers attached to the Commission's order relating to the most recent Type 1-A or Type 1-B notice of rate adjustment to replace the planned rates under the most recent Type 1-A or Type 1-B notice of rate adjustment with the corresponding planned rates applicable to the class from the Type 1-C notice of rate adjustment.

(c) *Formula.* The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, . . . , N)

R_{i,n} = planned rate of rate cell i

R_{i,c} = current rate of rate cell i (for a Type 1-A or Type 1-B rate adjustment) or rate from most recent Type 1-A rate adjustment for rate cell i (for a Type 1-C rate adjustment)

V_i = volume of rate cell i

(d) *Volumes—(1) Obtaining Volumes from billing determinants.* The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants.

(2) *Permissible adjustments.* The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(3) *Basis for adjustments.* Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.

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(4) *Adjustment for deletion of rate cell when alternate rate cell is not available.* For an adjustment accounting for the effects of the deletion of a rate cell when an alternate rate cell is not available, the Postal Service should adjust the billing determinants associated with the rate cell to zero. If the Postal Service does not adjust the billing determinants for the rate cell to zero, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (d)(2) of this section.

(5) *Procedures for mail preparation changes.* The Postal Service shall provide published notice of all mail preparation changes in a single, publicly available source. The Postal Service shall file notice with the Commission of the single source it will use to provide published notice of all mail preparation changes. When providing notice of a mail preparation change, the Postal Service shall affirmatively state whether or not the change requires compliance with paragraph (d)(2) of this section. If the Postal Service's determination regarding compliance with paragraph (d)(2) of this section is raised by the Commission or any other party, the Postal Service must demonstrate, by a preponderance of the evidence, that a mail preparation change does not require compliance with paragraph (d)(2) of this section in any proceeding where compliance is at issue. In any challenge to the Postal Service's determination concerning a mail preparation change, the challenging party shall provide all information to rebut the Postal Service's determination that the change is not subject to the price cap.

(e) *Treatment of rate incentives.* (1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in § 3010.24).

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior); and

(iii) The rate incentive is a rate of general applicability.

[79 FR 33833, June 12, 2014, as amended at 83 FR 4591, Feb. 1, 2018]

§ 3010.24 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.

(a) Mail volumes sent at rates under a negotiated service agreement or a rate incentive that is not a rate of general applicability are to be included in the calculation of percentage change in rates under § 3010.23 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g., because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement or the rate incentive that is not a rate of general applicability shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements and rate incentives that are not rates of general applicability in the calculation of the percentage change in rates and provide the rationale for its assumptions.

[79 FR 33834, June 12, 2014]

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3010.21 or § 3010.22.

§ 3010.26**§ 3010.26 Calculation of unused rate adjustment authority for Type 1-A and Type 1-B rate adjustments.**

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1-A and Type 1-B rate adjustments. When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b) of this section. When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment calculated under paragraph (b) of this section plus the interim unused rate adjustment authority calculated under paragraph (c)(2) of this section, less any interim unused rate adjustment authority used in accordance with paragraph (d) of this section.

(b) When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(1).

(c)(1) When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to § 3010.21(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to § 3010.21(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

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(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the notice of rate adjustment that led to its calculation. If interim unused rate adjustment authority is used to make such a rate adjustment, the interim unused rate adjustment authority generated pursuant to the notice shall first be added to the schedule of unused rate adjustment authority devised and maintained under paragraph (f) of this section as the most recent entry. Then, any interim unused rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing unused rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

(e) Unused rate adjustment authority generated under this section lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33834, June 12, 2014]

§ 3010.27 Calculation of unused rate adjustment authority for Type 1-C rate adjustments.

(a) For a notice of Type 1-C rate adjustment, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 for the most recent notice of Type 1-A or Type 1-B rate adjustment and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1-A or Type 1-B rate adjustment is subtracted from that result.

(b) Unused rate adjustment authority generated under paragraph (a) of this section lapses 5 years after the date of filing of the most recent notice of Type 1-A or Type 1-B rate adjustment.

(c) Unused rate adjustment authority generated under paragraph (a) of this

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section for a class shall be added to the unused rate adjustment authority generated in the most recent notice of Type 1-A rate adjustment on the schedule maintained under §3010.26(f). For purposes of §3010.28, the unused rate adjustment authority generated under paragraph (a) of this section for a class shall be deemed to have been added to the schedule maintained under §3010.26(f) on the same date as the most recent notice of Type 1-A or Type 1-B rate adjustment.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under §3010.29, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

[79 FR 33834, June 12, 2014]

§ 3010.28 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

§ 3010.29 Maximum size of Type 1-B rate adjustments.

Unused rate adjustment authority used to make a Type 1-B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

§ 3010.30 De minimis rate increases.

(a) The Postal Service may elect to file a Type 1-A notice of rate adjustment as a *de minimis* rate increase if:

(1) For each affected class, the rate increases contained within the notice of a Type 1-A rate adjustment do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

(2) For each affected class, the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 rate adjustment that was not a *de minimis* rate increase does not result in the percentage change in rates for the class equaling or exceeding 0.001 percent.

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under §3010.26(f) as a result of a *de minimis* rate increase.

(c) No rate decreases may be taken into account when determining whether rate increases comply with paragraphs (a)(1) and (2) of this section.

(d) In the next notice of a Type 1-A or Type 1-B rate adjustment for a class that is not a *de minimis* rate increase:

(1) The annual limitation shall be calculated as if the *de minimis* rate increase had not been filed; and

(2) For purposes of calculating the percentage change in rates, the current rate shall be the current rate from the *de minimis* rate increase.

(e) The Postal Service shall file supporting workpapers with each notice of *de minimis* rate increase that demonstrate that the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 notice of rate adjustment that was not *de minimis* does not result in a *percentage* change in rates for the class equaling or exceeding 0.001 percent.

[79 FR 33834, June 12, 2014]

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)**§ 3010.40 Negotiated service agreements.**

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

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Overview

- 1.0 Stamps
- 2.0 Stamped Stationery
- 3.0 Precanceled Stamps
- 4.0 Postage Meters and PC Postage Products (“Postage Evidencing Systems”)
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- 9.0 Exchanges and Refunds
- 10.0 Postage Due Weight Averaging Program
- 11.0 Scan Based Payment

1.0 Stamps

1.1 Postage Stamp Denominations

Postage stamps are available in the following denominations:

TYPE AND FORMAT		DENOMINATION
Regular Postage	Panes	\$0.01, .02, .03, .04, .05, .10, \$1, \$2, \$5, \$6.70, \$10, and \$24.70
	Coils of 3,000 stamps	\$0.01
	Coils of 10,000 stamps	\$0.01, .02, .03, .04, .05, and .10
Precanceled Presorted Price Postage – First-Class Mail and USPS Marketing Mail	Coils of 500, 3,000, and 10,000 stamps	Various nondenominated (available only to permit holders).
Semipostal	Breast Cancer Research, Save Vanishing Species, & Alzheimer’s stamps	Postage value equivalent to FCM single-piece 1-ounce stamped letter price. Price also includes a contribution to the specific cause and a nominal amount to offset costs incurred by the Postal Service in managing the Semipostal program of not less than 15%.

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TYPE AND FORMAT		DENOMINATION
Forever Stamp (Nondenvominated)	Panes of up to 20 stamps	If labelled "Forever", the current FCM 1-ounce stamped letter price.
	Booklets of 10 and 20 stamps	
	Sheetlets of 18 stamps	
	Coils of 50, 100, 3,000, and 10,000 stamps	
	Panes of up to 20 stamps	The following Forever stamps will always be equal in value to the applicable price for the price category printed on them, at the time of use: <ul style="list-style-type: none"> •The current FCM additional-ounce price •FCM non-machinable surcharge price •FCM 2-ounce stamped letter price •FCM 3-ounce stamped letter price •FCM postcard price
	Coils of 100 stamps	The current FCM additional-ounce price and FCM postcard price.
Panes of up to 20 stamps	Commemorative stamps equal the current FCM single-piece 1-ounce stamped letter price (exception: 3-ounce stamp). If labeled "Global Forever", the current FCMI 1-ounce stamped letter price.	

1.2 Postage Stamps Valid for Use

All postage stamps issued by the United States since 1860, unless listed in 1.3, are valid for postage from any point in the United States or from any other place where U.S. Mail service operates. Precanceled stamps may be used to pay regular postage and fees for extra services if the mailpiece is endorsed under the standards for the class of mail and service requested. Precanceled postage may be used only by permit holders authorized under 3.0. Unless excepted by standard, the total postage affixed must equal at least the postage charge for the class of the mail and, if applicable, the fee for the extra service requested. All nondenominated postage and makeup price stamps, including official mail stamps, are valid at the original prices of issue.

1.3 Postage Stamps Invalid for Use

The following are not valid to pay postage for U.S. domestic or U.S.-originated international mail:

- a. Postage due, special delivery, special handling, and Certified Mail stamps.
- b. Stamps of other countries.
- c. United Nations stamps, unless on mail deposited at the United Nations, NY.
- d. U.S. stamps that are mutilated or defaced; cut from stamped envelopes, aerogrammes, or stamped cards; covered or coated in such a manner that canceling or defacing marks cannot be printed onto the stamps; or overprinted with an unauthorized design, message, or other marking.
- e. Nonpostage stamps, such as migratory-bird hunting and conservation stamps, U.S. saving and thrift stamps.

Postage Payment Methods: Stamps

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1.4 Imitations of Stamps

Matter bearing imitations of postage stamps, in adhesive or printed form, or private seals or stickers resembling a postage stamp in form and design, is not acceptable for mailing.

1.5 Imitations of Markings

Matter bearing decorative markings and designs, in adhesive or printed form, resembling the markings and designs of official postal services, is not accepted for mailing (see [Exhibit 1.5](#)).

Exhibit 1.5 Prohibited Imitations**1.6 Stamp Image Use**

Postmasters may not advise the public about the reproduction of foreign or domestic postage stamps.

1.7 Position of Stamp on Mailpiece

Stamps must be affixed firmly in the upper right corner of the address side of the mail cover. Any stamp partly concealed by an overlapping stamp may not be counted as postage.

1.8 Reuse of Stamps

Reuse of stamps with intent to cause loss to the government or the USPS is punishable by fine and imprisonment.

1.9 Perforating Stamps

Postage stamps may be marked with perforation holes. The mark may not cover more than 1/4 square inch (1/2 inch by 1/2 inch) of the stamp, and the diameter of the holes may not exceed 1/32 inch.

1.10 Additional Standards for Forever Stamps

Forever stamps are sold for the price of the current First-Class Mail single-piece 1-ounce letter price. The postage value of each forever stamp is the current First-Class Mail single-piece 1-ounce letter price. Forever stamps may be used only on single-piece price mail.