

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Review of Commission's Price
Cap Rules

Docket No. RM2013-2

PUBLIC REPRESENTATIVE COMMENTS
(May 17, 2013)

I. INTRODUCTION

The Commission has initiated a review of its "price cap" rules in 39 CFR part 3010 and requested comments on clarifying part 3010's implementation of statutory directives and Commission orders.¹ The Commission has proposed rules that are intended to provide more certainty for the Postal Service and the mailing community concerning the Postal Service's authority to adjust rates for market dominant products under 39 U.S.C. 3622(d) and part 3010. One of the main reasons for amending the current rules is to regularize usage of statutory terms in the rules. Order No. 1678 at 6-7. Another reason is to resolve a dispute over the treatment of deflation. *Id.* at 8-9. A third reason is to clarify the calculation of percentage price changes for products within classes. *Id.* at 10. The proposed rules also address allowed adjustments to historical billing determinants; temporary rates and incentive programs; permissible topics for comments in rate cases; additional filing requirements related to workshare discounts and surcharges; use of most recently approved methodologies for estimating revenues, costs, and volumes; and shortening the comment period following an amended notice of rate adjustment in response to a Commission finding of inconsistency with applicable law. *Id.* 10-12.

¹ Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, March 22, 2013, 78 Fed. Reg. 22490, April 16, 2013 (Order No. 1678).

II. UNUSED RATE ADJUSTMENT AUTHORITY

The Commission has stated a goal of clarifying “how to determine the maximum rate adjustment that can be made in any one rate case. That determination requires a calculation of the annual limitation for the rate case and a calculation of the unused rate adjustment authority available for the rate case.” Order No. 1678 at 6. The expression “a calculation” suggests that unused rate adjustment authority (URAA) “for the rate case” is a single number. However, URAA is actually a table of numbers displaying separate URAs for each class by vintage. Proposed rule 3010.26(f) recognizes this by requiring the Postal Service to “track[] the establishment and subsequent use of unused rate adjustment authority [by] class.” *Id.*, Attachment at 11.

As originally adopted, the rules required the Postal Service to “devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority.”² By statute, “establishment” of URAA occurs when an actual rate adjustment “in any year” is less than the annual limitation for that year. 39 U.S.C. §§ 3622(d)(1)(A), (2)(C)(i). The statute also states that the Postal Service may use URAA from more than one year, may use any part of the URAA from any year, but must use URAA from the earliest (of five previous years) first. *Id.* § 3622(d)(2)(C)(iii).

The Commission essentially treats URAA for a class as a single, cumulative number—the sum five years of URAA. However, if the oldest URAA is positive and some more recent URAs are negative (reflecting deflation), summing all five years of URAs would not necessarily yield the *maximum* rate adjustment that could be made in

² Docket No RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 112 (Order No. 43).

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a given rate case. This is because the statute permits the Postal Service to utilize only positive URAAs if they are also the oldest. One can still find a maximum rate adjustment, but one needs the full table of URAAs in order to see whether using only the oldest positive URAAs produces a greater potential rate adjustment than summing all five years.

Respectfully submitted,

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