Postal Highlights: September 2018

# Executive Overview

## 2019 Budgeting

Postal Service leaders have publicly stated that they are preparing a CPI based rate increase for January 2019, based on August CPI. Now that there are two board members, we expect the Postal Service to move forward with the CPI based rate filing. Most mailers are planning on an increase of 2 – 3% in January or February with an additional increase later in the year of 2 – 3% in anticipation that the PRC will move forward with a variation of their original 10-Year Rate Review findings.

Actual rates will vary. For example, expect drop-shipped Marketing Mail letters to go up much more than inflation for the third consecutive year. This is due to the USPS finding that it has been overly generous in passing through its cost-savings to the mailers who do the work-sharing.

## Postal Legislative and Regulatory

Postal Reform and the PRC 10-Year Rate Review continue to remain on hold.

In an evening session on August 28, 2018, the United States Senate confirmed both nominees for the USPS Board of Governors:

* [David C. Williams](https://www.uspsoig.gov/about-us/david-c-williams)
* [Robert M. Duncan](https://gop.com/leaders/national-committeeman-robert-duncan-ky)

Also on August 28, President Donald J. Trump announced his intent to nominate the following individuals to BOG:

* [Ron A. Bloom](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FRon_Bloom)
* [Roman Martinez, IV](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=http%3A%2F%2Fpeople.equilar.com%2Fbio%2Froman-martinez-orbital-atk-%2Fsalary%2F892326)

Friday, August 10, marked the 120 day deadline for the [Task Force on the United States Postal System](http://www.fairrington.com/white-house-issues-executive-order-on-postal-service/) report to be completed. Over the last months, many industry associations have met with the Task Force. Indications are that President Trump was briefed but there has been no public statement on if the report will be released, only conflicting guesses.

## Other Legal and Legislative Activity with Potential Impacts

There are other legal and legislative activity that has the potential to impact marketers and mail volumes.

**Supreme Court Rules against Wayfair in Online Sales Tax Battle:** June 21, in a 5-4 decision, the Supreme Court ruled in favor of South Dakota on South Dakota vs Wayfair.  South Dakota was seeking to upend the 1992 Quill ruling which prevented states from imposing sales taxes on companies that did not maintain a physical presence within their borders.

**California Consumer Privacy Act:** At the end of June, California passed sweeping new privacy and data security legislation, the California Consumer Privacy Act. The act is similar in nature to the EU’s General Data Protection Regulation (GDPR), a regulation in EU law on data protection and privacy for all individuals within the European Union (EU) and the European Economic Area (EEA). Expansion to other states may limit marketers reach and ability to target.

# Topic Summaries

* **USPS Pricing – Planning for 2019:** Postal Service leaders have publicly stated that they are preparing a CPI based rate increase for early 2019. BOG now in place, expect the USPS to move forward.
* **Presidential Executive Order:** Friday, August 10, marked the 120 day deadline for the [Task Force on the United States Postal System](http://www.fairrington.com/white-house-issues-executive-order-on-postal-service/) report to be completed. Over the last months, many industry associations have met with the Task Force. Indications are that President Trump was briefed but there has been no public statement on if the report will be released.
* **White House Recommends USPS Privatization:** The White House released the Reform Plan and Reorganization Recommendations for Delivering Government Solutions in the 21st Century. It is a group of recommendations that are based on the Administration’s analysis. Recommendations that are significant in nature, typically require legislation.
* **Postal Regulatory Commission (PRC) 10 Year Rate Review**: Most expect that the PRC is likely to hold on releasing their 10-Year Review findings until the completion of the Task Force.
* **Postal Reform:** Most expect that the legislation is likely to hold until the completion of the Task Force.
  + **Senate:** March 22, 2018, a bipartisan group of Senators introduced reform legislation. S.2629
  + **House:** [H.R. 6076](#_H.R._6076:_Postal): Reintroduced the postal reform bill it first introduced early last year. [H.R. 6282](#_H.R._6282:_Stop)**:** Stop Postal Closures Act (not expected to move forward). [H.Res.993](#_H.Res.993:_USPS_Remain): USPS Remain an Independent Establishment
* **Board of Governors:** In an evening session on August 28, 2018, the United States Senate confirmed both nominees for the USPS Board of Governors: [David C. Williams](https://www.uspsoig.gov/about-us/david-c-williams) and [Robert M. Duncan](https://gop.com/leaders/national-committeeman-robert-duncan-ky). Also on August 28, President Donald J. Trump announced his intent to nominate the following individuals to BOG: [Ron A. Bloom](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FRon_Bloom) and [Roman Martinez IV](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=http%3A%2F%2Fpeople.equilar.com%2Fbio%2Froman-martinez-orbital-atk-%2Fsalary%2F892326).
* **PRC Leadership:** Waiting for confirmation of Kubayanda.
* **Enterprise Payment System:** USPS representatives are reaching out to mailers to help them through the upgrade process. For CAPS users, the Postal Service has announced the retirement of CAPS on April 1, 2019.
* **USPS Reports Financials for FY2018 Q2:** Revenue continues to decline for Market Dominant products. Packages continue to grow, but rate of growth is slowing.
* **USPS Petition to use Internal Measurement System Approved:** PRC issued a ruling in [PI2015-1](https://www.prc.gov/Docs/91/91257/Order_2336.pdf) that grants the Postal Service's petition to use internal measurement systems to measure service performance on its products.
* **Supreme Court Rules against Wayfair in Online Sales Tax Battle:** June 21, in a 5-4 decision, the Supreme Court [ruled](https://www.bizjournals.com/boston/news/2018/06/21/supreme-court-rules-against-wayfair-in-online.html) in favor of South Dakota on South Dakota vs Wayfair.  South Dakota was seeking to upend the 1992 Quill ruling which prevented states from imposing sales taxes on companies that did not maintain a physical presence within their borders.
* **California Consumer Privacy Act:** At the end of June, California passed sweeping new privacy and data security legislation, the California Consumer Privacy Act.
* **STOP Act:** Moved out of the House, now to the Senate. The measurable cost impact should be small: the AED requirements are phased in through 2020.

Table of Contents

[Executive Overview 1](#_Toc524074547)

[2019 Budgeting 1](#_Toc524074548)

[Postal Legislative and Regulatory 1](#_Toc524074549)

[Other Legal and Legislative Activity with Potential Impacts 1](#_Toc524074550)

[Topic Summaries 2](#_Toc524074551)

[USPS Pricing – Planning for 2019 4](#_Toc524074552)

[Presidential Executive Order on USPS 4](#_Toc524074553)

[White House Recommends USPS Privatization 4](#_Toc524074554)

[Postal Regulatory Commission (PRC) 10-Year Rate Review 5](#_Toc524074555)

[Postal Reform 5](#_Toc524074556)

[Senate 5](#_Toc524074557)

[House 6](#_Toc524074558)

[H.R. 6076: Postal Reform Act of 2018 6](#_Toc524074559)

[H.R. 6282: Stop Postal Closures Act 6](#_Toc524074560)

[H.Res.993: USPS Remain an Independent Establishment of the Federal Government 7](#_Toc524074561)

[Board of Governors 7](#_Toc524074562)

[AdditionalBackground 7](#_Toc524074563)

[PRC Leadership 7](#_Toc524074564)

[USPS Continues Rollout of Enterprise Payment System 8](#_Toc524074565)

[USPS Financials and Mandatory Payments 9](#_Toc524074566)

[USPS Reports Financials for FY2018 Q3 9](#_Toc524074567)

[Mandatory Pension \ Healthcare Payments 9](#_Toc524074568)

[USPS Petition to use Internal Measurement System Approved 9](#_Toc524074569)

[Supreme Court Rules against Wayfair in Online Sales Tax Battle 10](#_Toc524074570)

[California Consumer Privacy Act 11](#_Toc524074571)

[STOP Act – Potential Impact on Postal Service 11](#_Toc524074572)

[Appendix 1: Timeline Overview 13](#_Toc524074573)

# USPS Pricing – Planning for 2019

We anticipate that the Postal Service will seek a rate increase for January 2019. Over the summer, USPS leaders publicly stated that they were preparing a CPI-based rate increase for early 2019. The barrier to filing was the lack of board to approve a rate increase.

The cycle of filing in October, based on August CPI, with a January implementation has become the typical timeline over the last years.

As a point of reference, CPI in March was 2.051%, 2.073% in April, increased by .2% in May and June CPI came in at 2.254%. Note that the rating authority is not necessarily applied as a flat charge across rate cells, instead, some rates may be greater than CPI and others lower.

Actual rates will vary. For example, expect drop-shipped Marketing Mail letters to go up much more than inflation for the third consecutive year. This is due to the USPS finding that it has been overly generous in passing through its cost-savings to the mailers who do the work-sharing.

# Presidential Executive Order on USPS

Friday, August 10, marked the 120 day deadline for the [Task Force on the United States Postal System](http://www.fairrington.com/white-house-issues-executive-order-on-postal-service/) report to be completed. Over the last months, many industry associations have met with the Task Force. Indications are that President Trump was briefed but there has been no public statement on if the report will be released.

# White House Recommends USPS Privatization

The White House has released their [Reform Plan and Reorganization Recommendations](https://www.politico.com/f/?id=00000164-2324-dbdc-a96d-373e4e2a0000) for Delivering Government Solutions in the 21st Century.

This Reform Plan is an annual report that started based on an Executive Order (EO) 13781, entitled “Comprehensive Plan for Reorganizing the Executive Branch”. It highlights the need to evaluate the organizational constructs that support today’s mission delivery objectives. Building on a history of bipartisan Government reform initiatives, the EO focuses specifically on the role of organizational alignment in reducing “duplication and redundancy,” and improving “efficiency, effectiveness, and accountability of the executive branch.”

The report outlines the Administration’s analysis and recommendations for structural realignment of the Executive Branch to better serve the mission, service, and stewardship needs of the American people. While some of the recommendations identified in this volume can be achieved via Executive administrative action, more significant changes will require legislative action as well.

The section on changes to the United Stated Postal Service begins on page 68 and contains the following:

*United States Postal Service: Summary of Proposal: This proposal would restructure the United States Postal System to return it to a sustainable business model or prepare it for future conversion from a Government agency into a privately-held corporation. Like many European nations, the United States could privatize its postal operator while maintaining strong regulatory oversight to ensure fair competition and reasonable prices for customers. The President’s Task Force on the United States Postal System will make recommendations on reforms towards this goal in August 2018.*

Again, the report is a group of recommendations that are based on the Administration’s analysis. Recommendations that are significant in nature typically require legislative action. The chances of seeing a privatized Postal Service in the near future are extremely low.

# Postal Regulatory Commission (PRC) 10-Year Rate Review

Industry remains in a holding pattern.

More than 150 organizations submitted PRC 10-Year Review Comments. Following the comment period, a reply comment period was opened with an end date of March 30, 2018.

The timeline for a final ruling is unknown. Once final, there is an anticipated 45 – 90 day implementation period. This is a very fluid situation. Some thought it could be as early as June 2018 or push into 2019. The White House Task Force and lack of BOG has been pointed to as the reason for the PRC’s delay in moving forward.

# Postal Reform

Most expected that the legislation is likely to hold until the completion of the Task Force. Now that the report has been delivered to the White House, but not publically released, uncertainty continues.

## Senate

* Senate Bill Introduced S.2629
  + On March 22, 2018, a bipartisan group of Senators introduced reform legislation. The Postal Service Reform Act of 2018: Improving Postal Operations, Service, and Transparency to stabilize, preserve and improve the Postal Service – an essential part of our nation’s infrastructure and economy.
  + It is unknown if it will move forward. Most in the industry do not feel that it will not, but it does keep the conversation alive.
  + The bill has much in common with HR756 which was introduced in the House of Representatives last year. It includes the 2.15% exigent increase as well as a provision that PRC will take it into account for the PRC 10-Year Review Process.
* Senator Ron Johnson (R-WI) efforts
  + He is said to be forming his own bill.
  + It is anticipated that it would put the USPS through a bankruptcy type of proceeding, but no details are available. It is speculated that the end game of the proceeding would be to reopen labor contracts.
  + Little to no chance of an effort of this nature would move forward.

## House

### H.R. 6076: Postal Reform Act of 2018

On June 12, the United States House or Representatives has reintroduced the postal reform bill it first introduced early last year.

It is called the Postal Reform Act of 2018. The bill's new number is HR 6076, and can be found [here](https://catalogmailers.org/wp-content/uploads/2018/06/HR-6076-House-Postal-Reform-Act-2018.pdf). Watch for updates at [CONGRESS.GOV](https://www.congress.gov/bill/115th-congress/house-bill/6076). It was introduced by Rep. Mark Meadows (R-NC-11th) and cosponsored by Reps. Steve Russell (R-OK-6th), Dennis Ross (R-FL-15th), Elijah Cummings (D-MD-7th), Gerry Connolly (D-VA-11th), and Stephen Lynch (D-MA-8th).

The bill requires the USPS to come up with a plan to manage its debt, taking into account "projected changes in mail volume, projected changes in the number of employees needed to carry out the responsibilities of the Postal Service, the long-term capital needs of the Postal Service, including the need to maintain, repair and replace facilities and equipment and the distinctions between market-dominant and competitive products." The goal is to stabilize the USPS as an integral part of domestic and international supply chains.

### H.R. 6282: Stop Postal Closures Act

This has a low chance of moving forward, but if it did, it would mean additional costs to the USPS and decreased ability to lower costs.

On June 18, Jose Serrano (D-NY), Evan Jenkins (R-WV), and Gwen Moore (D-WI) have reintroduced the Stop Postal Closures Act ([H.R. 6282](https://www.congress.gov/bill/115th-congress/house-bill/6282?q=%7B%22search%22%3A%5B%22postal+Huffman+Serrano%22%5D%7D&r=57)), bipartisan legislation to end the closure and consolidations of mail processing facilities across the country.  (The bill was introduced during the previous session of Congress as [H.R. 4656](https://www.congress.gov/bill/114th-congress/house-bill/4656?q=%7B%22search%22%3A%5B%22postal+Huffman+Serrano%22%5D%7D&r=2).)

In 2012, the U.S. Postal Service began closing or consolidating mail processing plants across the country, including two facilities in Eureka and Petaluma. Mail processing plants are the central sorting hubs, and their elimination can mean that mail has to travel farther before delivery.

Facility closures have been associated with delays in mail delivery, missed overnight mail deadlines, and reduced frequency of deliveries. These closures are particularly taxing on seniors, veterans and rural communities who depend on timely deliveries for prescriptions and other services. While the USPS temporarily has halted these closures, they could begin again at any time….

Specifically, the legislation would:

* Put a moratorium on current closures and consolidations;
* Establish a framework that any future closures must be approved by the Postal Regulatory Commission;
* Create a list of criteria and data that USPS must analyze including impact on small businesses, vote by mail voters, and unique geographic situations;
* Require a robust public notification and comment period so stakeholders’ views are a part of the PRC’s review;
* Reinstate the July 1, 2012 mail delivery standards of the 1-3 day delivery, which was eliminated at the start of 2015 by USPS; and
* Empower the PRC to set annual performance benchmarks.

### H.Res.993: USPS Remain an Independent Establishment of the Federal Government

Sponsor: Rep. Lynch, Stephen F. [D-MA-8] (Introduced 07/16/2018)

Committees: House - Oversight and Government Reform

Expressing the sense of the House of Representatives that Congress should take all appropriate measures to ensure that the United States Postal Service remains an independent establishment of the Federal Government and is not subject to privatization.

Sense is that this is union driven and will not make it to the floor.

# Board of Governors

In an evening session on August 28, 2018, the United States Senate confirmed both nominees for the USPS Board of Governors:

* [David C. Williams](https://www.uspsoig.gov/about-us/david-c-williams) of Illinois, for the remainder of a seven-year term expiring December 8, 2019. Williams was sworn in as the second independent Inspector General (IG) for the U.S. Postal Service on August 20, 2003.
* [Robert M. Duncan](https://gop.com/leaders/national-committeeman-robert-duncan-ky) of Kentucky, for the remainder of a seven-year term expiring December 8, 2018, and an additional term expiring December 8, 2025. A 40-year political strategist and veteran of Republican politics, served as the 60th chairman of the Republican National Committee (RNC) from 2007-2009.

Also on August 28, President Donald J. Trump announced his intent to nominate the following individuals to BOG:

* [Ron A. Bloom](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FRon_Bloom), a former senior official in the Obama Administration from February 2009 to August 2011 – Term ending December 8, 2020
* [Roman Martinez, IV](http://click.icptrack.com/icp/relay.php?r=62246186&msgid=1675177&act=MA8C&c=331563&destination=http%3A%2F%2Fpeople.equilar.com%2Fbio%2Froman-martinez-orbital-atk-%2Fsalary%2F892326), board member of Cigna Corporation and retired as managing director of Lehman Brothers – Term ending December 8, 2024

## **Additional Background**

The term of the last Governor expired on December 8, 2016. By law, the USPS must notify the PRC of any changes to rates, fees or basic classification rules. Such filings require the prior approval of the Postal Service’s Board of Governors. The Board normally consists of up to nine governors appointed by the President of the United States with the advice and consent of the Senate. Currently, the Board of Governors now consists of only the Postmaster General and Deputy Postmaster General.  With no politically appointed members they do not have the authority to approve rate changes or basic classification changes; this include promotions.

# PRC Leadership

[Michael Kubayanda](https://clicks.memberclicks-mail.net/wf/click?upn=j3dAOGmkEKUelBShsKEm-2BJldW3Sox4pCQLcHh5gfgviW1qMxzaiRrlJGeH795P1w2RK4Ju-2FKkSpG-2F2Etp5WudkKH5-2BvWmIJu6NmqdPlE4ZW2-2Bf99jt-2FbKVmdEzfp2Gyt_IUEh-2F9pvymCNIfobN-2Bf6x4456FCUafa661J-2FUhFPj3CckbFs34KtinfVSA1HnAX12KLkY62oBXKkdg3JeaqgEkfSmpLhmDoTT1AJh5zBi0KRj0-2BO90h-2F9C-2BVXDzRzPIfTSrDhYAtneo-2FthaJ-2Bj8HUmj4JAKxndE8rMeS2DCfuLCTcosrAiBVMqG95Zc-2BVbGQU6NFCI18A0tDKOV7veuWyXOSRnig-2FxzzjRZH6x9hHdgnYQidXAdcrhi6SvlgqgeN3FH-2BTgvsl5lOGQO2ye-2B-2BUDId-2FiMS0tFNz2o2uN67hTvrXcguhoqUniTmzW0D1DdALO7uWr4-2FtChhfLD8WcIuNA-3D-3D) has been under consideration to fill the vacant Postal Regulatory Commissioner position. On June 6, 2018 the President formally [nominated](https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-personnel-key-administration-posts-10/) Mr. Kubayanda to fill that position for the remainder of a six-year term expiring November 22, 2020.

Mr. Kubayanda serves as a board member and privacy officer for a digital health startup.   Michael previously worked with the Office of Inspector General (OIG) of the U.S. Postal Service, ending as director of government relations, in which he worked with OIG officials to support the work of inspectors general in data analytics.  In the OIG’s research group, he oversaw research on technical issues and wrote reports addressing postal economics and price regulation, intellectual property, and public-private partnerships, while serving as an advisor to colleagues on issues such as privacy, knowledge management, and innovation.  Prior to the OIG, he served on the staff of the House Committee on Oversight and Government Reform.  Michael holds degrees from Georgetown University, Northwestern University, The Ohio State University, and studied at the Graduate Institute in Geneva, Switzerland.

**Background:** The Commission is composed of five Commissioners. They are appointed by the President, by and with the advice and consent of the Senate, for a term of six years. Not more than 3 of the Commissioners may be adherents of the same political party.

|  |  |
| --- | --- |
| **Current Commissioners** | **Term Expiration Date** |
| Chairman Robert G. Taub (R) | Oct. 14, 2022 |
| Vice Chairman Tony Hammond (R) | Oct. 14, 2018 |
| Commissioner Mark Acton (R) | Oct. 14, 2022 |
| Commissioner Nanci E. Langley (D) | Nov. 22, 2018 |
| Vacant | Nov. 22, 2020 |

# USPS Continues Rollout of Enterprise Payment System

The Postal Service has been developing a new Enterprise Payment System (EPS) to replace the current product-centric payment with a centralized account processing system enabling customers to pay and manage their service online using a single account.

The Enterprise Payment System (EPS) allows customers to pay for Postal products and services through a single account, called the Enterprise Payment Account (EPA). EPS supports commercial, domestic and international products and services which includes First-Class Mail, USPS Marketing Mail, Periodicals, Electronic PO Boxes Online (EPOBOL) and Address Quality Products.

USPS representatives are reaching out to mailers to help them through the upgrade process. For CAPS users, the Postal Service has announced the retirement of CAPS on April 1, 2019.

# USPS Financials and Mandatory Payments

## USPS Reports Financials for FY2018 Q3

The Postal Service reported its [financial](http://about.usps.com/who-we-are/financials/welcome.htm) results on August 9 for third quarter of 2018 (April 1, 2018 – June 30, 2018). It was a reported loss of $1.5 billion, compared with a $2.1 billion dollar loss during the third quarter of 2017.

There was a modest increases in revenue from price increases and growth in the USPS shipping business as well as reductions in retiree benefit expenses contributed to the improvement.

The multi-year trends of declining volumes of letter mail and growth in packages continued this quarter.

* First-Class Mail volume declined 499 million pieces for the period
* Periodicals volume remained nearly flat compared to last year
* Marketing Mail volume increased 102 million pieces for the period due to increases in political and election mail
* Shipping and Packages revenue increased by $475 million, or 10.2%.

## Mandatory Pension \ Healthcare Payments

In September, it was announced that the USPS would not make their mandatory payments into accounts for its retirees’ pensions and health care. From 2012 through 2017 these missed payments add up to nearly $34 billion.

# USPS Petition to use Internal Measurement System Approved

Postal Regulatory Commission issued a ruling in [PI2015-1](https://www.prc.gov/Docs/91/91257/Order_2336.pdf) that grants the Postal Service's petition to use internal measurement systems to measure service performance on its products.

This will replace the External First-Class (EXFC) measurement system used to measure delivery performance. The internal measurement system includes a greater volume of mail than the sampling method.

It was on January 29, 2015, that the Commission established Docket No. PI2015-1 to consider a Postal Service proposal concerning new internal service performance measurement systems for several of its market dominant products, including products within domestic First-Class Mail, Periodicals, Marketing Mail and Package Services. Over the duration of this docket, the Postal Service has progressed from presenting an “idea” for new measurement systems, to developing and implementing systems that report service performance for a variety of market dominant products.

Over that time, the Postal Service proceeded with the development and implementation of these new measurement systems for its own internal purposes. The Postal Service did not base its proposals on costs. However, the increase in costs due to implementing and operating the internal service performance measurement system will be offset by the retirement of the legacy EXFC measurement system. This includes the EXFC end-to-end measurement system applicable to First-Class Mail, single-piece letters and flats. It also includes the use of EXFC reporters for generating Last Mile data for other mail products.

In the docket, the Postal Service asks the Commission to consider whether or not the Commission would accept data generated by these systems for the purpose of service performance measurement reporting as required by regulation and statute. 39 U.S.C. § 3652 requires that the Postal Service provide an annual report to the Commission analyzing the quality of service “for each market dominant product provided in such year” by providing “(B) measures of the quality of service afforded by the Postal Service in connection with such product, including— (i) the level of service (described in terms of speed of delivery and reliability) provided; and (ii) the degree of customer satisfaction with the service provided.”

# Supreme Court Rules against Wayfair in Online Sales Tax Battle

On April 17 a hearing took place before the U.S. Supreme Court. The court is considering whether to overrule Quill, a 1992 decision that the Constitution’s commerce clause prohibits the states from requiring out-of-state retailers that do not have a physical presence in the state to collect tax on sales to state residents.

At that time, sources projections on pending ruling seemed mixed. The American Catalog Mailers Association, ACMA stated “we have reason for cautious optimism” and that “the Justices clearly understand what is at stake for the industry and they are wrestling with the appropriate result.”

Finally on June 21, in a 5-4 decision, the Supreme Court [ruled](https://www.bizjournals.com/boston/news/2018/06/21/supreme-court-rules-against-wayfair-in-online.html) in favor of South Dakota on South Dakota vs Wayfair.  South Dakota was seeking to upend the 1992 Quill ruling which prevented states from imposing sales taxes on companies that did not maintain a physical presence within their borders.

Consequently catalog shippers and others may now be required to collect tax on shipments irrespective of where they are located physically. As the United State has a number of different local and tax regimes, this ruling could have important cost implications for catalog mailers.

The following was provided by the American Catalog Mailers Association provided the following information that provides additional insight into the fact that it is not about avoiding tax, but rather the complexity of its management:

“Small catalog and online retailers with little or no presence beyond their headquarters will be hurt the most – some will be forced out of business,” said *ACMA* President & Executive Director Hamilton Davison. “Rural Americans, shut ins and older consumers will be particularly hard hit by this decision.”

By ruling against remote sellers and customers all across America, the High Court’s decision means companies who sell only 100 orders a year must now collect sales taxes for every South Dakota order. “This is a ridiculously small threshold,” Davison said. “A merchant might sell only 100 $20 orders and now be forced to comply with laws well outside its capacity and be subject to horrendous complexity.”

This opens the door to more than 12,000 separate taxing jurisdictions who are now free to impose virtually any requirement on businesses nationwide. Gone too are the protections from unreasonable and countless compliance burdens on companies without a physical presence; in fact there may be no end to what politicos attempt to impose on those who do not vote for them. “The dizzying array of differing state and local tax laws presents an impossible array of complexity for both remote sellers like catalog companies and their customers,” Davison added.

Congress must now work quickly to clarify exactly what burdens are acceptable to interstate commerce before things devolve into chaos unleashed by this decision. “Given the lack of restraint historically shown by regulators and tax administrators willing to impose virtually any burden on companies outside their borders,” Davison said, “the Court’s decision is sobering and troubling.”

Adding to the absurdity of the High Court’s decision, a recent Government Accounting Office report found that forcing all remote sellers to collect sales tax adds only 2%-3% new revenue but would impose significant additional costs to collect. In essence, it will take only a small drop to employment and corporate profitability to offset any new sales tax revenues this generates.

# California Consumer Privacy Act

The below information was provided by the Association of National Advertisers, ANA. Expansions of these efforts could impact Marketing Mail volumes.

At the end of June, California passed sweeping new privacy and data security legislation, the California Consumer Privacy Act ([AB375](http://ana.informz.net/z/cjUucD9taT03NzgyMzkwJnA9MSZ1PTExMTk2MDM3NTgmbGk9NTY1ODY5MDA/index.html)). The bill passed in lieu of a ballot initiative that was being readied for the November ballot. While marginally better than the ballot initiative, the legislation also contains a number of problematic and unclear provisions:

* Consumers can demand companies provide all of the information that has been collected about them as well as the right to demand the deletion of that information
* Consumers can opt-out of the sharing of any personal information about them to another company and cannot be discriminated against for doing so
* The law has inconsistent provisions that could adversely impact offering loyalty or discount programs
* It has a very broad definition of “personal information” that includes web browsing and app history, biometric information, geolocation data and much more
* Consumers who experience a data breach have a private right of action  - with statutory damages up to $750 per consumer per incident or actual damages
* The legislature is also considering a “clean up” bill to correct some of the drafting errors attributable to the rushed process to pass the legislation. AB375 does not take effect until January 2020.

# STOP Act – Potential Impact on Postal Service

On June 14, the House passed the Securing the International Mail Against Opioids Act (H.R. 5788) on a 353-52 vote. The House bill will now head to the Senate, where it already has bipartisan backing. Senator Rob Portman, R-Ohio, who has championed the issue for multiple sessions of Congress, said he would ensure the measure gets signed into law “in the coming weeks.”

The legislation would bring requirements currently enforced on private shipping companies to the Postal Service by 2021, when the mailing agency would transmit advanced electronic data, or AED, to Customs and Border Protection on 100 percent of international packages. USPS, which currently only collects the data on 40 percent of inbound international packages, would have to pass on the information on 70 percent of packages by the end of this year. The agency would face civil penalties starting in 2021 if it continues to allow international shipments without AED to enter the country. Most foreign packages would face a $1 fee to cover the costs of additional customs processing.

The House bill will now head to the Senate, where it already has bipartisan backing. Sen. Rob Portman, R-OH, who has championed the issue for multiple sessions of Congress, said he would ensure the measure gets signed into law “in the coming weeks.”

Expected Impact:

* The measurable cost impact should be small: the AED requirements are phased in through 2020
* Those costs should be directly attributable to inbound international volume, so the effect on domestic costs should be zero
* It will be difficult to measure the cost effect after the fact because these are probably IT costs that have a very small impact overall.

Prepared by Paula Stoskopf 09/07/2018

[paula.stoskopf@lsccom.com](mailto:paula.stoskopf@lsccom.com)

# Appendix 1: Timeline Overview

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2017 | 2018 | | | | | | | | 2019 |
|  | **Dec** | **Jan** | **Mar** | **Apr** | **May** | **Jun** | **Jul** | **Aug** | **Oct** | **Jan** |
| Board of Governors |  |  |  | Hearings for 3 nominees held | Homeland Security and Government Affairs Committee approved 2 nominees |  |  | 2 approved  WH indicated intention of nominating 2 more |  |  |
| Legislation |  |  | S.2929: Postal Service Reform Act of 2018 Introduced |  |  | H.R. 6076: Postal Reform Act of 2018 Introduced  H.R. 6282: Stop Postal Closures Act Introduced  California Consumer Privacy Act  H.R. 5788: STOP Act moves out of House | H.Res.993: USPS Remain Independent Establishment introduced | **Postal Reform Timeline Unknown** |  |  |
| Postal Regulatory Commission | 10 Year Review: Commission Issued Findings |  | 10 Year Review: Comments Due |  |  | White House nominates governor |  | **10-Year**  **Timeline Unknown** |  |  |
| USPS |  | 2018 Rate Increase |  |  |  |  |  |  | Expected to File for 2019 Rate Increase | Implement new rates if approved |
| White House |  |  |  | Executive Order establishing a Task Force |  | Reform Plan and Reorganization Recommendations: Privatization |  | Task Force Report Due  Delivered to WH, not public |  |  |