

**UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

**Notice of Price Adjustment and
Classification Changes Related to
Move Update Assessments**

Docket No. R2010-1

**Comments Of The
National Postal Policy Council**

The National Postal Policy Council (NPPC)¹ hereby respectfully submits its views responding to Commission Order No. 318 inviting comment concerning the notice filed by the Postal Service with respect to Move Update (MU) Assessment Changes. NPPC will comment on three aspects of MU Assessments: 1) the assessments themselves as applied to First Class Mail; 2) the urgent need to resolve substantial operational issues in the measurement of/ and rules to be applied to, MU compliance through Performance Based Verification (PBV) or alternatives, and provide clarity to mailers about what is expected of them; and 3) the lack of consistency and transparency in investigations of MU compliance currently being conducted by the Postal Inspection Service.

¹ NPPC consists of approximately 30 of the largest customers of the Postal Service. Our members believe, in general, that the postal system remains vital to the nation's commerce and communications in the 21st Century and key to their own business operations. NPPC and its members maintain an active interest in proceedings generally before the Commission, and on Docket R2010-1, in particular. A full list of our members can be found on our website, www.postalcouncil.org.

Introduction and Summary of Argument

NPPC believes that two of the pillars of the filing in this Docket, implementation of assessments as of January 4, 2010, and the calculation of assessments for noncompliance in First Class, are substantial and meaningful improvements from the Postal Service's previous approach of May, 2009, and reversion to the single piece rate. Unfortunately, this progress threatens to be overwhelmed by a lack of clarity on measuring compliance. Until mailers, in fact, simply and clearly know what to do about numerous issues that have emerged in the measuring process affecting its accuracy, proceeding further would be counterproductive.

NPPC also feels compelled to point out to the Commission the dichotomy between the Postal Service's setting a date when and how assessments will first be applied, and an active program of investigation into MU compliance, replete with steep assessments, by the Postal Inspection Service (PIS). Exacerbating this last is a total lack of transparency in the standards the PIS is applying and the calculation it is using to arrive at assessments. Mailers should be entitled to have USPS apply one approach consistently and transparently throughout the institution, and be able to fully rely on that one approach. That does not appear to be the case here.

I. With Respect to First Class Mail, the Adjustment of Assessments Downward, and the Delay in Implementation, are Encouraging

The Postal Service first announced its intention to more vigorously examine compliance with MU rules and impose assessments for failure to comply in November, 2008.² At that time, the assessment for First Class Mail (FCM) violations articulated by USPS was a default to the single piece rate for the entire mailing.³ For NPPC members, which often have mailings of one million pieces and more, that implied very large, and unaffordable, assessments for potentially very small failures. Our view was that, since

² See Publication 363, at 1.

³ Id.

the goal of the enforcement program was to encourage compliance with MU, and not raise funds for USPS,⁴ that assessments on this basis were disproportionate and counterproductive. Mailers so assessed would find themselves under tremendous internal managerial pressure to reduce such risk for the future. That pressure would translate much more easily to moving mail onto the Internet than to undertaking the substantial investment of time and resources necessary for complying, when the measurement system for determining violations is plagued with problems.⁵

Hearing objections from NPPC and other mailing interests, the Service engaged in extensive discussions with its customers on MU. These discussions precipitated two decisions by USPS: 1) to defer imposition of assessments from May, 2009, until January, 2010; and 2) to adjust the calculation of assessments downward to what NPPC and others viewed as proportionality and affordability, as proposed in the instant proceeding. Both changes are reflected in this filing and are welcome improvements.

Nonetheless, the progress represented by these improvements threatens to be swallowed whole by the persistent lack of clarity in the methodology and measurement of compliance proposed by the Postal Service. As discussed below, there are numerous problems identified with the implementation of an MU compliance system through PBV, and the alternative means of measurement, including by NCOA^{Link}, ACS (conventional and through the Intelligent Mail Barcode), and Fast Forward Move Update Notification (FFMUN).

Until and unless these problems are resolved, and mailers have a substantial degree of certainty and predictability, and therefore confidence in, both what steps are required for compliance, and how that compliance is measured, the facts that there will have been a delay in implementation and a substantial reduction in the proposed assessment rates will become quite secondary. Gauging the risk of exposure to the penalties is essential to the members of NPPC, as well as other mailers.

⁴ Docket R2010-1, Notice of Market Dominant Price Adjustment and Classification Changes, United States Postal Service, at 6, October 15, 2009.

⁵ See discussion of PBV, *infra*, pp. 4-5.

a) These Assessments for Noncompliance May Raise Questions of Interpretation that Could be Considered in a Separate Inquiry

As a general matter, NPPC believes that there may be a substantial question of interpretation of the system of modern rate regulation implemented by the Commission under the Postal Accountability and Enhancement Act of 2006 (PAEA) as to whether the imposition of, or changes to, the amount of assessment for noncompliance with a condition of mailing constitutes a rate change. It may well be a question that the Commission would want to consider in a separate inquiry. One important indicator is that the Service has filed in a rate proceeding, an implicit statement that it is.

Should the Commission at some point undertake, however, to definitively answer that threshold question and determine it in the affirmative, that it does indeed constitute a rate change, then the next two important questions would be whether and how a price decrease in this context might affect the rate cap.

While acknowledging that the above questions are outstanding and may need to be addressed, NPPC is not prepared to address them in this proceeding. Our focus has been on engaging with the Service to rationalize and revise the assessments to a level that is commensurate with prompting mailers to diligently adhere to the MU rules, but is neither punitive nor a fundraiser for the Service. We believe that goal has been achieved in the assessments specified for FCM by USPS in this proceeding.

Therefore, NPPC would suggest that examination of the larger questions of interpretation might better be left to another time and a discrete proceeding that could provide for more extensive and informed review and consideration than the very constrained amount of time available in this proceeding.

II. Notwithstanding the Appropriateness of Assessments for Noncompliance, None Should be Imposed Until Outstanding Methodological Questions are Resolved

While perhaps not within the scope of the Commission's review in this proceeding, it is important to note that pivotal implementation questions remain unresolved. Specifically, there are numerous questions about the efficacy of the PBV measurement system; its compatibility with state or other legal requirements which may be inconsistent with USPS changes of address, and more. And even though mailers and the Service have been virtually continuously engaged on addressing those questions during 2009, they have not yet been resolved.

We are hopeful that the ongoing discussions with the Service will yield sufficient progress by January 4, 2010, that some real clarity and predictability about complying and when mailers may be subjected to assessments will have been attained. However, in NPPC's view, unless these issues have been substantially and reasonably resolved by the above deadline proposed in this docket, imposition of the assessments should be delayed until they are.

A recitation set out below, distilled from the extensive hours mailers, including NPPC members, have spent on analyzing the problems inherent in the measurement system, provides a spare recapitulation of the background, costs and impact of the outstanding concerns. In addition, NPPC wishes to associate itself with the extensive and illuminating analysis of the compliance system problems set forth in section II of the comments filed in this docket by the Association for Postal Commerce (Postcom).

In particular, NPPC agrees with Postcom that the process for setting out the requirements for compliance has been unusual. For the most part, what instructions have been made available have been contained in DMM Advisories, postings on the RIBBS website and otherwise in formats that fail to provide sufficient specificity and clarity. Until last week, there was no Federal Register Notice. And even that notice does not close the information gap. All of this underscores the notion that the compliance

requirements are not adequately formed, and the systems used for verification not yet reliable for this purpose, leaving mailers at sea and in need of more time before enforcement and assessments begin.

a) An Overview of Specific Compliance Issues

To start, MU compliance can be costly and complex for mailers. FCM address maintenance historically was not performed at the back end of the process at mail entry, but was managed in internal billing systems, which were integrated with numerous other systems to support customer address data. Therefore, many mailers have had to revise the basic architecture of, and redesign in detail, their address processes to support new and changing USPS address requirements, such as CASS/DPV/LACSLink/SuiteLink and, of course, MU. This has had the paradoxical, and complicating, effect of pulling address cleansing away from the address source to meet USPS requirements. Not surprisingly, it has also necessitated heavy investment in order to install the system upgrades that meet the needs of redesign to the new requirements.

Even more significant expense and effort is likely to be incurred, however, since the Service plans to tighten the threshold for tolerance, but has not specified to what target level. Mailers certainly cannot commit resources to correct to a tolerance that has not been defined. Moreover, whenever a tightened threshold is announced, mailers will as a result require substantial lead time to comply. This is lead time that will be necessary to further evaluate requirements and systems, and process changes that may be needed to support more stringent tolerances.

And, a number of NPPC members are observing younger Americans specifically and purposefully not completing an NCOA but rather calling their banks, telephone or cable companies, or insurance companies directly to advise them of the change. But they deliberately do not complete an NCOA in order to avoid solicitations that come from completing an NCOA. So, our companies often end up with better addresses than the USPS, but which can still be registered as invalid for MU purposes.

Turning specifically to the various postal systems used to measure MU compliance, mailers believe there are significant issues with each. Until PBV (Performance Based Verification) was installed on MERLINS (Mail Evaluation Readability Lookup Instruments) to audit mail compliance in the Business Mail Entry and/or Detached Mail Units, mailers had no way to evaluate the successful deployment of their MU processes. With PBV, mailers learned that the Service was scoring several items mailers believe should not be from the common sense standpoint that they would receive no notice. Notably, these included MLNA (Moved Left No Address) and Post Office Box Closed.

But disputed scoring is not the only MERLIN/PBV issue. MERLIN does not provide actual images of failed pieces. So, additional manual work, at greater expense, is required to capture images of those failed pieces, which are essential to investigating and resolving their change of address concerns.

Turning to NCOALink, despite being an approved method, it does not support presorted mail. Thus, it cannot be used as the only source of change if a customer's mail is presorted. This is quite confusing to mailers. Also, although NCOALink will accept DPV addresses that are validated to a primary street address, no match will be returned if the secondary information is not present in the input record. And, there are still undefined naming logic questions, and small files (fewer than 100 unique addresses) are not included.

ACS also has a number of problems. It is extremely complex to evaluate and deploy with service codes. There are multiple methods for filing and multiple files received for traditional, One Code or ACS Full Service. Among other questions are: loose name matching; a lack of standardized support for abbreviation of 30 character addressing; and no CASS validation before being passed back to mailers.

In other options, on Ancillary Services Endorsements, reason codes are inconsistent or inaccurate and, again, are not DPV validated. And on the 99% Accurate Testing Method, there is particular lack of clarity, because mailers are not required to update all addresses, or measured against the 95-day timeframe. Mailers assume this test is in flux.

b) Legal Constraints Bear Particular Review, Given Their Impact on Many Mailers' Ability to Comply with MU Rules

First Class Mailers often operate subject to legal constraints concerning validation of address changes. Typically, these constraints require direct communication with the mail recipient to establish and/or confirm an address change. The mailer is legally unable to rely upon a change of address filed with the Service, and transmitted to the mailer via, say, NCOALink. For example, banks and financial institutions confront these requirements largely in situations beyond managing basic checking and savings accounts. So, if a bank is dealing with products such as mortgages, or is functioning as a brokerage or otherwise conducting investment banking or securities activities, when there is a change of address, the holder of the account of record must be contacted directly to validate a move.

Insurance companies confront requirements on confirming address changes in all 50 states. They will be required to engage in a state-by-state effort to determine whether rules can be changed, or contracts adapted in a way that will permit MU compliance, yet still be in accord with state law. This will be an extensive, time-consuming and expensive process, with no guarantee of success. For example, one insurance company member of NPPC which is typical of the industry has 16 entry points, and is working with 30,000 insurance agents. Assuming rules and/or contract changes, that will still mean a massive job to comply..

And some telecommunications companies labor under federal rules, administered by the Federal Communications Commission, concerning Customer Proprietary Network

Information (CPNI), which among other things, specifies that those companies must verify address changes directly with the customer.⁶

Finally, for any such constraints there are additional degrees of difficulty. Since legal constraints often require changes to be made directly by the recipient, 95 days may not be long enough to effectively contact the customer and obtain his/her response, let alone the 30 days envisioned in Publication 363.⁷ Obviously, mailers cannot control whether customers respond in a timely way, rendering this a very costly process for updating. Further, information returned on moves is not 100% validated or accurate, causing additional “churn.” Consumers often make typographical or other mistakes, offer illegible changes, fail to complete the form or do so inaccurately, and more.

c) Relatedly, the Method of Scoring is Too Rigid and Works to the Disadvantage of the Mailer Instead of in Neutral Fashion

Also troubling is that assessments will be based on individual mailings. This means there will be liability if a mailing exceeds the threshold to the extent that it exceeds it, but there is no credit for mailings that comply, no matter by how much or how often they satisfy the threshold test. In the cases of frequent or continuous mailers with even spotless MU records, an atypical miss, perhaps resulting from human error or computer malfunction, will result in an assessment. Moreover, if in previous mailings that mailer has been consistently and substantially well within tolerances, there is no process for taking cognizance of that performance in offsetting any failure. That is why mailers widely believe that some form of averaging, or incorporating consideration of that mailer’s compliance trends, should be applied in mitigation of any particular violation.

⁶ FCC Safeguards on disclosure of customer proprietary network information. 47 CFR 64.2010(f):

(f) Notification of account changes. Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, **or address of record is created or changed.** (Emph. supplied.)

⁷ See Publication 363, at 6.

In light of all of the above, NPPC's preferred request of the Commission would be to approve the USPS proposal conditionally. Given the confusion among mailers generated by the variety of documents with unclear guidance on MU compliance, the January 4 date should hold only if USPS succeeds in achieving clarity for its customers by that date. However, since there appears to be no legal authority to permit the Commission to so condition its approval, we reluctantly join Postcom in recommending that this proceeding be dismissed without prejudice, while permitting a refiling by the Service with guidance sufficient to provide clarity on compliance and resolve the extensive list of mailing community concerns.

III. The Standards for Compliance, Date to Begin Imposition of Assessments, if Warranted, and the Formula for Calculating Assessments Should be Uniform and Transparent throughout the Postal Service

During this year when implementation of assessments has been delayed and the amount of those assessments dramatically reduced, the Postal Inspection Service has been conducting a number of investigations of mailers with respect to MU compliance. While its proceedings are confidential, mailers report extensive inquiries and assessments of huge proportion that bear no relation either to the harm caused – i.e., the number of pieces out of compliance – or the revised assessment formula proposed in this docket. Moreover, there is an unsettling emotional component for mailers to be suddenly visited by the quasi-police-like postal inspectors, more closely associated with combating terrorism, dangerous substances or simple fraud through the mails, than failures to comply with technical requirements such as Move Update. That is hardly the way to treat, not to mention retain, one's best customers.

Having said that, NPPC does not complain about USPS' generally or specifically directing the PIS to ensure that any and all conditions of mailing, including MU, are met by mailers. What we do complain about is that there is neither consistency nor transparency in their doing so.

First, on its face, the fact that the PIS is conducting investigations and assessing penalties for noncompliance is at odds with the Service's assertion that it will not begin to do so until January 4th of next year.

Second, whatever standards of measurement are being used, and how the measurement is accomplished, by the PIS are opaque. While it is likely that the particular target of a PIS MU investigation sooner or later learns the answer to both, no other mailers or the public generally are privy to those answers. So, no other mailer can anticipate if it is failing to meet those standards and can go about taking any necessary corrective action. This is particularly important to large mailers with multiple facilities or contracted services – far-flung operations that would take considerable time and attention to ensure are in compliance.

Third, whatever formula is being used by the PIS to determine assessments is similarly opaque. Mailers should be aware of potential liability for failure to comply with MU. And if that liability is a simple default to single piece rates, then all of the problems in the measuring of MU failures, and the unfairness inherent in a sampling system that is not averaged in any way, are magnified to the extent of vast disproportion.

Transparency of governmental processes generally serves the public good, helping to assure fairness and judiciousness in the application of power, such as the ability to impose assessments for failures to meet conditions of mailing. This value was reinforced, and directed, by President Obama in one of his first acts upon taking office.⁸ While the derivation, conduct and targets of a PIS investigation should remain confidential, the standards applied and formula used for assessments in any investigation should not.

Moreover, consistency should apply. The Service should not give with one hand, and take away with the other. Either assessments will not be applied before January 4, or

⁸ See *Transparency and Open Government*, Memorandum for the Heads of Executive Departments and Agencies, President Barack Obama, January 21, 2009.

they will. It should not be both ways. And since the Service has now publicly and formally proposed in this docket that they take effect on January 4, and beneficially so, in our view, NPPC asks that the Commission at least recommend to the Service that it apply the principles of transparency and consistency in this instance. This would mean having the PIS stand down from imposing assessments until January 4, 2010, and adhere to: a) the methodologies and standards of measurement used by the Postal Service in connection with the proposal in this Docket, after the problems adverted to above are ameliorated; and b) the formula for calculating such assessments proposed in this Docket.

Conclusion

NPPC believes the formula for assessments and date of imposition proposed in this Docket are great improvements over the previous iteration, and welcome them. Nonetheless, we believe that the confusion remaining among NPPC members and in the mailing community generally over standards and rules to be applied in verifying MU compliance is so serious that the Service's filing should be dismissed without prejudice, and the Service required, upon subsequently refiling, to specify the standards and rules clearly to this Commission. Further, the Service should be advised to reconcile the standards applied, assessments imposed, and start date used by the Inspection Service with the contours of its proposal in this Docket, and to assure that the PIS exercises transparency with respect to both the standards and the formula for assessments that it employs.

Respectfully submitted,

/S/

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