

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

NOTICE OF MARKET-DOMINANT PRICE
ADJUSTMENT AND CLASSIFICATION CHANGES
RELATED TO MOVE UPDATE REQUIREMENT

Docket No. R2017-7

COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL
(July 20, 2017)

The National Postal Policy Council (“NPPC”) respectfully submits these comments on the Postal Service’s notice of proposed rate and classification changes affecting the Move Update requirement.¹ NPPC opposes the planned 0.5 percent tolerance threshold as unrealistically low for commercial First-Class Mail. NPPC urges the Commission to adopt a 1.0 percent error rate tolerance for commercial First-Class Mail, to include that tolerance in the Mail Classification Schedule, and to affirm that it is not a just and reasonable practice for mailers to be assessed separately by the Postal Service and by its Inspection Service for the same mailpiece.

Commercial First-Class mailers understand the vital importance of accurate, up-to-date addresses and support the Postal Service’s continuing efforts to improve address quality, reduce the costs associated with undeliverable-as-addressed (UAA) mail, and exploit the potential of the Postal

¹ United States Postal Service Notice of Market Dominant Price Adjustment and Classification Changes (June 30, 2017) (“*Notice*”). The Commission issued public notice of this proceeding in Order No. 3990 (July 7, 2017), 82 *Fed. Reg.* 31736 (July 10, 2017).

Service's and industry's investment in the Intelligent Mail barcode. The need for address accuracy is especially important in commercial First-Class Mail, which mail owners use to deliver vital financial account statements, insurance documents, health care information, and other regulated information to individuals throughout the nation. To achieve the greatest accuracy possible, NPPC member mail owners and mail service providers invest millions of dollars in the various address compliance techniques authorized by the Postal Service, and regularly run their address lists through NCOA^{Link}, Address Correction Service, and other address software. The result is exceptionally cleansed addressed mail.

Nonetheless, despite these efforts, commercial First-Class mailers face a set of legal restrictions and practical problems that can prohibit them from changing mailing addresses even when the ACS database may contain a changed address. This results in address "errors" that the mailer (or mailing service provider) is prohibited from correcting. The error tolerance needs to be set at a level that recognizes these problems in addition to the normal lags in processing address changes that inevitably occur.

NPPC members discussed this issue with Postal Service officials frequently during the planning process for replacing the MERLIN system with the Census system. Initially the Postal Service had contemplated an error rate tolerance of 0.8 percent. NPPC members expressed substantial concern that even that rate was too restrictive, and explained how the legal and operational constraints under which they conduct business, coupled with the differences

between the Census and MERLIN methods, made complying with even a 0.8 percent error rate too difficult.

Nonetheless, the Postal Service has proposed, without much explanation, an even more unreasonable 0.5 percent tolerance. That threshold ignores the operational constraints under which commercial First-Class mailers operate, and will inevitably result in more assessments to commercial First-Class Mailers for noncompliance despite their doing everything within their power to comply with the new Move Update rules. This will also result in more current First-Class Mail being assessed for noncompliance than the Postal Service assumes in its filing, thereby casting doubt on the accuracy of its price cap calculation.

NPPC strongly recommends that the new error tolerance rate for commercial First-Class Mail initially should be set at 1.0 percent in recognition of the regulatory and operational realities facing First-Class Mail. This tolerance should be included in the Mail Classification Schedule, just as is the 70 percent threshold in the MERLIN system. See MCS 1110.5 and *Notice* at 25. As in it did in Docket No. R2010-1, the Commission should not approve the Postal Service's proposal to delete the specific threshold from the MCS and thereby leave it subject to change at the Postal Service's pleasure.

In addition, although the Census method *should* prevent inconsistent treatment between Postal Service acceptance personnel and the Postal Inspection Service, in which mailings found compliant by the former are later subjected to a duplicative enforcement action by the Postal Inspection Service, the Postal Service has been unwilling to confirm that is the case. The

Commission should affirm, consistent with its Order No. 348, that double assessments on the same mail pieces are not just and reasonable as required by Section 3622(b)(8).

Finally, differences in how the MERLIN and Census systems function can affect error rates even though the Postal Service asserts that both measure compliance against the same Address Correction Service database. These differences may result in more pieces being assessed under the new Census system than occur under the MERLIN system.

I. THE ERROR RATE TOLERANCE FOR COMMERCIAL FIRST-CLASS MAIL SHOULD BE SET AT 1.0 PERCENT

Despite First-Class mailers' commitment to minimizing address errors for customer service as well as a matter of postal regulations, there are real-life situations that preclude mailers from making Move Update changes. Most importantly, distinct legal restrictions can prohibit mailers or mail preparers from changing addresses even when the Postal Service ACS provides a changed address. There are also situations where the address provided by the mail owner is more accurate than that of the Postal Service.

For example, many types of health care mailed communications are subject to regulations that require the mail owner to use the last address that it has on file. A case in point is an employer-provided health plan, for which only the employer is allowed to change an employee's address based on information supplied by the employee. Changes may not be made even if an updated address appears in the Postal Service ACS. This also means that an outsourced

benefits company is also legally prohibited from changing the address; only the employer may do so.

Corresponding restrictions exist in financial services. Administrators of 401(k), 403, 409, or health savings plans cannot change the address; only the employer sponsoring the plan may make changes. Some financial institutions may not use either the Postal Service ACS or NCOA^{Link} because they cannot legally change addresses without customer authorization. *Postal Service, Move Update Verification Frequently Asked Questions* at 4 (https://ribbs.usps.gov/move_update/documents/tech_guides/FAQ_links.htm accessed July 18, 2017). For another example, when an insurance company learns of a changed address, such as through NCOA^{Link}, it must work through its local agents to contact the customer to confirm and authorize the change. The process of checking can take far longer than the 95-day period and result in issues.²

Compliance difficulties also arise in the case of one-time services. For example, a patient may give an accurate-at-the-time address to an urgent care provider or an emergency room but due to lags in processing the insurance claim, an invoice is sent to that address 100 days later (that is, after the 95-day ACS update period), but the patient has already moved. Similarly, a patient may have moved, but fails to give the new address at the next appointment and the invoice is mailed more than 95 days later. The invoice will go to the former

² The Postal Service could accelerate this process by sending images of noncompliant pieces to mailers (who, after all, pay the postage). However, the Postal Service has said it cannot do so, although it seems to have no problem sending images of mail for free to the recipients (who do not pay the postage).

address on record, not the new one, and there is nothing the medical office or a mail services provider could do to avoid the inaccurate address.

To ensure the mail owners' continued compliance with regulations under which it operates, their contracts prohibit mail services providers from changing addresses. For example, when a mail owner (*e.g.*, a bank, a doctor's office, a brokerage firm, a business offering a 401(k) plan to its employees) contracts with the mailing service provider to prepare and enter the mail, the contract typically prohibits the mail services provider from changing any address on the mail, due to the legal duty of the mail owner to maintain the confidentiality of the end user's information. As a result, much mail generated by financial services firms, banks, insurance companies, and health care providers cannot have addresses updated through the Postal Service addressing services without the change being verified by the mail owner or, ultimately, the end user customer to whom the mail is addressed.

Even a correct address can generate errors if the last name appears first in the address, causing a matching logic problem that could ultimately result in an error. And in others, there possibly could be multiple causes of errors.

Despite these difficulties, First-Class mailers often simply do not have the option not to mail. They cannot choose not to obey laws and regulations that require monthly credit card statements, prompt notice of the expiration of insurance policies or monthly bank statements even when the address on file differs from an address in the Postal Service ACS database. The proposed 0.5

percent error tolerance is too low to accommodate the errors generated by these scenarios for which the mailers are not responsible.³

And the software itself, while good, can be incomplete or contain errors. As a result of these factors, some mail today already exceeds the 0.5 percent threshold even though it was very recently processed using Move Update software. NPPC does not have statistics as to how frequently this occurs; however, multiple large NPPC members report that despite utmost efforts using both NCOA^{Link} and ACS, a considerable number of their mailings would still exceed the 0.5 percent threshold.⁴

In contrast, in Marketing Mail (which many NPPC members also use), some of the reasons that prevent Mail Preparers from changing addresses on First-Class Mail without the consent of the mail owner or the addressee do not apply. Much Marketing mail is to non-customers, for which the advertiser or mailer has far more leeway to change addresses, or can choose not to mail to a non-compliant address. This suggests that the Move Update error rate can be lower for Marketing Mail than for commercial First-Class Mail.

For some time, the Postal Service has allowed mailers to comply with Move Update through the “99 Percent Accurate” method. This is available to mailers that can demonstrate to the satisfaction of the National Customer Support Center that they have a very effective method to keep addresses

³ NPPC does not oppose the 0.5 percent error rate tolerance for other classes of mail, whose mailers operate under less restrictive regulations.

⁴ A number of reasons may account for this, including timing of updates, snowbirds who do not mark address changes as “temporary,” and non-standardized processes for address collection.

current. If less than 1 percent of the mailer's file results in a change-of-address match when tested against the Postal Service's COA database, the mailer is approved to use this method. *USPS Guide to Move Update* at 12 (January 2017).⁵ Inasmuch as 1 percent error is sufficient to satisfy Move Update in this context, it should be sufficient under the Census system as well, which similarly tests the mailer's addresses against the COA database.

First-Class Mailers do have an option of resorting to the Legal Restraint method to avoid having certain pieces count against the error rate.⁶ Experience has shown that receiving approval for that process is quite cumbersome. See *USPS Guide to Move Update* at 35-37. It is fair to say that this difficulty has played a significant role in mailers' not trying to avail themselves of it more often. This process needs to be streamlined, and this need is even more compelling if commercial First-Class mailers are to be held to the arbitrarily tight 0.5 percent standard.

As First-Class volume declines, an arbitrarily low 0.5 percent error rate threshold will result in more assessments than occur today. More frequent assessments, even if not resulting in larger assessments than under the current system, will strain already tight budgets and tend to discourage mail owners from staying in the mail. That outcome is not in the interest of either the Postal Service or the mailers.

⁵ See https://ribbs.usps.gov/move_update/documents/tech_guides/GuidetoMoveUpdate.pdf.

⁶ See USPS, *Address Quality Census Measurement and Assessment Process*, 82 Fed. Reg. 11871, 11872 (Feb. 27, 2017). Mailings approved for Legal Restraint would not be subject to or eligible for the Census method. *Response of the United States Postal Service To Chairman's Information Request No. 2, Q1(a)* (July 14, 2017).

For these reasons, a more reasonable threshold for commercial First-Class Mail would be 1.0 percent, a level that also would reduce the risk of double jeopardy.

II. THE POSTAL SERVICE'S PROPOSAL TO DELETE THE ERROR RATE THRESHOLD FROM THE MAIL CLASSIFICATION SCHEDULE SHOULD BE REJECTED

Currently, the Move Update Assessment Charge provisions in the Mail Classification Schedule specifies the error tolerance:

Add \$0.07 per assessed piece, for mailings with less than 70 percent of mailpieces passing a Performance Based Verification at acceptance and which cannot demonstrate compliance with Move Update requirements.

MCS Section 1110.5. The Commission adopted that MCS language in Docket No. R2010-1. *See Order Reviewing Price Adjustment and Classification Changes Related to Move Update Assessments*, Order No. 348, at 17 (Nov. 25, 2009).

In Docket No. R2010-1, the Postal Service proposed to omit the error rate tolerance for the Performance Based Verification method from the MCS, promising instead to offer “appropriate public notice” on its own terms before making a change. *Id.*, at 17. The Commission rejected that approach. Instead, it held that the tolerance must be included in the MCS, recognizing that “any reduction in the tolerance may affect the relevant mails’ average revenue per piece (and thus have an impact on the cap).” Order No. 348 at 17. The Commission noted that doing so “preserves the opportunity for parties to make

argument about the applicability of the price cap to future changes in the tolerance level at the time such changes are proposed by the Postal Service.” *Id.*

Experience has proven the wisdom of the Commission’s approach. Mailers today have *this* opportunity, in this docket, to address changes in the tolerance level, as well as the other related changes, because the Commission recognized that the tolerance level is a classification that belongs in the MCS.

Notwithstanding Order No. 348, the Postal Service once again is proposing to delete any reference to a tolerance rate. The Postal Service’s proposal would make the following changes to the MCS:

Move Update Assessment Charge

Add \$0.087 per assessed piece, for mailings that fail Move Update verification under the Address Quality Census Measurement and Assessment Process, with less than 70 percent of mailpieces passing a Performance Based Verification at acceptance and which cannot demonstrate compliance with Move Update requirements.

Notice, Changes to Mail Classification Schedule, Part A, at 2. It offers no explanation for removing the error rate threshold from the MCS. The only presumable reason is that it wishes to preserve the unilateral right to tighten the threshold at any time to any degree, no matter how arbitrary, without having to undergo regulatory review.

The proceeding demonstrates why that is inadvisable. The 0.5 percent error rate tolerance that the Postal Service plans to impose has not been justified and amounts to an entirely unexplained 37.5 percent reduction from the also unrealistic 0.8 percent standard that the Postal Service has discussed over the past year. Furthermore, there is a distinct possibility that the Postal Service may

in the future seek to reduce the error rate tolerance still more, which could have price cap implications warranting Commission review.⁷

Including the error rate tolerance threshold in the MCS provides mailers with the certainty of the standard that they will be expected to meet. Omitting this error rate threshold from the MCS would leave mailers at risk of unreasonable or arbitrary changes that might be driven more by Postal Service desires than by a realistic understanding of the real-world conditions under which commercial mailers operate daily.⁸ NPPC urges the Commission to retain the error rate tolerance in the MCS.

III. THE “JUST AND REASONABLE” REQUIREMENT SHOULD PREVENT MAILERS USING THE CENSUS METHOD FROM BEING SUBJECT TO DOUBLE JEOPARDY FROM THE POSTAL INSPECTION SERVICE

For some time, mailers have complained about being subjected to enforcement audits by the Postal Inspection Service long after a mailing has been accepted, found compliant, and delivered by the Postal Service.⁹ A common complaint is that the Inspection Service applies a more stringent “zero tolerance” standard instead of the Move Update standards set forth in the

⁷ The Postal Service cannot avoid this review simply by asserting that a change has no price cap implications; it must demonstrate that such is the case.

⁸ Although the error rate tolerances belong in the MCS, NPPC appreciates the Postal Service’s recent practice of publishing proposals relating to Move Update in the *Federal Register*, instead of through more informal methods, and urges the Postal Service to continue to work Move Update issues through the formal *Federal Register* process instead of nonbinding guidance.

⁹ The Postal Service’s Office of the Inspector General determined in 2010 that the Postal Service and the Inspection Service did not use the same compliance standards. See *OIG Audit Report – Move Update Program and Investigations* (May 12, 2010). To NPPC’s knowledge, there is still no commitment that the Inspection Service must apply the same standards as does the Postal Service.

Domestic Mail Manual and reviewed, to varying degrees, by this Commission. This can result in mailers being charged two assessments on the same piece.

The Section 3622(b)(8) requirement that rates and classifications be just and reasonable (39 U.S.C. 3622(b)(8)) applies to Move Update fees and charges no less than to other charges. In Docket No. R2010-1, the Commission recognized the inherent unfairness of mailers being charged both the Move Update Assessment Fee (by the Postal Service) and the Move Update Noncompliance Charge (by the Postal Inspection Service), finding that imposing two charges on the same mailing for the same reason (for being Move Update noncompliant) was unreasonable. Order No. 348 at 13. Instead, the Commission held that the fee and charge should not be cumulative, and that there is a material difference between good faith efforts and chronic, bad faith noncompliance. It held that the imposition of a Move Update Noncompliance Charge could be based only on a lack of good faith on the part of the mailer. *Id.*

In this proceeding, mailers expected that replacing the sample-based MERLIN process with the Census process that examines each piece would eliminate the risk of the Inspection Service second-guessing the Postal Service's approval of a mailing. Gone would be the risk (small in any case) that the sample is somehow not representative of the entire mailing. Once a Census-approved mailing has been accepted, a mailer should be able to sleep easily knowing that it had met the requirements. There should be no occasion for the

Inspection Service later to arrive unannounced at the mailer's premises, armed with badges and guns, to conduct an audit on the very same mailing.¹⁰

Yet when it was asked this very question, the Postal Service demurred:

All mailings using postage rates that require compliance with the Move Update standard, regardless of whether they qualify for verification under the Address Quality Census Measurement and Assessment Process, may be subject to a separate assessment in the event that they do not comply with the Move Update standard pursuant to DMM 602.5. A mailer has not complied with the Move Update standard if a USPS-approved Move Update method (DMM 602.5.2) was not used to update the mailer's address list with correct addresses (unless the mail bears an alternative address format under DMM 602.3). In those circumstances, the mailer did not qualify for the presort or automation price claimed on the postage statement or electronic documentation. The separate assessment could be applied to every mail piece in a mailing for which the mailer did not comply with the Move update standard.

82 *Fed. Reg.* at 11873-11874.

The Postal Service's position is difficult to understand. The Census process *will be* a "USPS-approved Move Update method" under DMM 602.5.2. A mailing that qualified for verification under the Census method should, by definition, comply with the Move Update standard pursuant to DMM 602.5. If a Census-method verified mailing has been reviewed and cleared by the Postal Service, the Inspection Service should not conduct an independent after-the-fact review unless, for example, fraud or other wrongdoing, or gross negligence, on

¹⁰ NPPC members, like all mailers, confronted by an Inspection Service audit on any subject immediately incur additional expense and effort. Because the USPIS is a law enforcement organization, mailers bring in legal teams and consult with security professionals (due to the need to safeguard health, financial, insurance and other personally identifiable information). Knowledgeable operational and systems executives also need to be included, and they may have to travel from other corporate sites around the country. While surprise audits induce more turmoil, mailers incur these burdens even if they have advance notice. And the additional expense is regarded as part of the cost of mailing, thereby raising those costs.

the part of the mailer or mail service provider is reasonably suspected. Yet the Postal Service appears to be saying that the risk of double jeopardy for Census-method compliant mailings remains quite real.

By any measure, this double jeopardy is unacceptable and the antithesis of justness and reasonableness. The Postal Service and its Inspection Service should apply precisely the same rules and standards to assess compliance. In particular, mailings that qualify under the results-based, data-driven Census methodology should not be subject to enforcement actions by the Inspection Service based on different standards.

The Commission should find that charging a mailer twice for the same reason is not a just and reasonable practice. At the very least, payment of the assessment surcharge on any mail pieces above the applicable error threshold should discharge any future liability as to those pieces.

IV. THE CENSUS METHOD WILL ALLOW ERRORS THAT ARE AVOIDED BY THE MERLIN PROCESS, CASTING DOUBT ON THE ACCURACY OF THE POSTAL SERVICE'S PRICE CAP CALCULATION

NPPC is concerned that the change to the Census method will result in more address errors than under the MERLIN method, due to the different point in the acceptance process at which the errors are detected. In other words, the Census method, combined with the 0.5 percent tolerance threshold, will actually increase the number of non-compliant mailed pieces compared to today.

Coupled with the utterly unexplained increase in the assessment from \$0.07 to

\$0.08,¹¹ this could affect the accuracy of the price cap calculation submitted by the Postal Service with the *Notice*.

This problem arises because today, under the MERLIN sample method, a mailer has the option to pull a mailing that does not comply, rework it, and resubmit it. That opportunity evidently will no longer exist under the Census method. Instead, a mailer that has an addressing issue may not become aware of that fact until after the mail has been accepted and is entirely within the custody of the Postal Service. As a result, addressing errors reworked and solved today – and thus never count as noncompliant because they are either fixed or never mailed – will be entered unfixed and, under the Census method, will be deemed non-compliant.

This change will increase the number of noncomplying pieces in the mail system compared to today, because pieces that today may be “pulled back” and reworked before being re-tendered will simply be entered. This will result in an increase in noncompliant pieces because some errors will no longer be fixed.

The Postal Service’s price cap calculation concluded that 98.5 percent of First-Class Mail would pay less in assessments under the new census method compared to the MERLIN method. It concludes that combining that estimate with the increase in the assessment to \$0.08 cents and the new manner in which it is

¹¹ NPPC does not necessarily oppose this increase per se, as long as the Commission finds it to be consistent with the price cap requirements. However, the lack of explanation by the Postal Service leaves everyone in the dark about the reasoning behind it. The Commission should require full explanations of any future proposal to raise the assessment fee before approving, assuming price cap and other legal constraints on pricing are satisfied. With respect to the apparently arbitrary increase in the assessment from \$0.07 to \$0.08 in this case, the Commission could reject it on the grounds that the Postal Service has not shown that it is just and reasonable, as required by Objective 8. 39 U.S.C. 3222(b)(8)

applied leads to a 0.00 percent change in prices in First-Class Mail. *Notice* at 11-12. That calculation assumes no change in the number of noncompliant pieces, an assumption that is almost certainly incorrect for the reason explained above. Unfortunately, NPPC is unable to estimate the amount of the increase in noncompliant pieces.¹²

NPPC recommends that the problem can best be avoided simply by raising the tolerance threshold to a level sufficient to avoid affecting the cap calculation. The 1.0 percent error rate threshold that NPPC suggests above should be sufficient to accommodate this issue.

V. CONCLUSION

The Postal Service should not demand the impossible. Despite commercial First-Class mailers having explained their great difficulty in meeting even a 0.8 percent Move Update error rate tolerance, the Postal Service has proposed, without explanation, an even more unreasonable 0.5 percent tolerance.

The predictable outcome of this seemingly minor change will be more noncompliant mailings, more assessments, and yet more mailer frustration in dealing with the Postal Service. Indeed, this is an excellent example of the type of unnecessary aggravation that causes commercial First-Class mailers to look to

¹² The price cap regulations do not allow the Postal Service to assume mailers will change how they prepare mail when calculating price cap compliance; cap compliance is calculated on constant volumes. 39 C.F.R. §3010.23. However, the Commission has never considered how to apply this rule when a change in Postal Service verification procedures will allow mail into the system that is tendered today, but pulled back and reworked before it is finally entered into the mailstream.

move more mail out of the postal system. At a time when the Postal Service should be striving to retain or increase mail volume, setting an error rate tolerance at an arbitrarily low level (one driven apparently by operational hopes instead of sensitivity to customer concerns) sends the opposite message.

For these reasons, the National Postal Policy Council urges the Commission to prevent the Postal Service from taking what will prove to be a counterproductive step, and to establish the Move Update error rate tolerance for commercial First-Class Mail at 1.0 percent in the Mail Classification Schedule. We further urge the Commission to find that it is not just or reasonable for mailers to be assessed twice for the same pieces. Finally, the Commission should encourage the Postal Service to simplify the Legal Restraint option.

Respectfully submitted,

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