

There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the "Final Environmental Statement related to the Operation of South Texas Project Units 1 and 2," NUREG-1171, dated August 1986.

#### *Agencies and Persons Consulted*

On June 23, 2004, the staff consulted with the Texas State official, Mr. William Silva, Bureau of Radiation Control of the Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 27, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public

File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1-800-397-4209 or (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated in Rockville, Maryland, this 19th day of July, 2004.

For the Nuclear Regulatory Commission,  
**Robert A. Gramm,**

*Chief, Section 1, Project Directorate IV,  
Division of Licensing Project Management,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 04-17260 Filed 7-28-04; 8:45 am]

**BILLING CODE 7590-01-P**

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## **POSTAL RATE COMMISSION**

[Docket No. MC2004-5; Order No. 1413]

### **Repositionable Notes Market Test**

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order.

**SUMMARY:** This document establishes a formal docket for consideration of a proposed one-year market test of a supplemental service feature for bulk First-Class Mail, Standard Mail, and Periodicals. Conducting the test would allow the Service to collect data and information on customer response and related matters, and thereby determine whether it should seek to establish these services as permanent offerings.

**DATES:** See **SUPPLEMENTARY INFORMATION** for dates.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, general counsel, at 202-789-6818.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on July 16, 2004, the Postal Service filed a request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*, for a recommended decision on a proposed market test of a supplemental service feature for bulk First-Class Mail, Standard Mail, and Periodicals that would allow "repositionable notes" to be attached to such mail. The Postal

Service proposes to implement the market test through additions to the Domestic Mail Classification Schedule (DMCS) and associated new surcharges. The request includes attachments and is supported by the testimony of two witnesses and a library reference. It is on file in the Commission's docket room for inspection during regular business hours and is available on the Commission's home page at [www.prc.gov](http://www.prc.gov).

**Description of the request.** For a period of one year, the Postal Service proposes to charge mailers for attaching a "Repositional Note" (RPN) to mailpieces of certain subclasses. According to the Postal Service, an RPN is a Post-it-type self-adhesive note that mailers can affix to the outside of a mailpiece. Because eligible RPNs are mechanically applied using air pressure, and have an adhesive strip that is wider than on notes used in typical office settings, they are unlikely to become detached from the mailpiece during handling. They are typically used to display advertising messages that encourage recipients to open, read, and respond to the internal contents of the mailpiece. They can be removed by the recipient and re-attached to computers, refrigerators, or similar objects as reminders that extend the life of the commercial message. They can also be used as a simple way to correct minor errors in catalogues. USPS-T-1 (Direct Testimony of USPS witness Holland) at 1.

The Postal Service states that RPNs have been available nationally for bulk letter mail for approximately a year, and that there have been no operational problems or costs to the Postal Service associated with their use over that time. It states that Domestic Mail Manual provisions authorizing RPNs for bulk letter mail are currently in place. Its proposed market test, therefore, is not expected to alter the *status quo*, except to allow bulk flat mail to carry RPNs, and to charge fees for their use. *Id.* at 2-3.

**Motion for a stand-alone market test.** The Postal Service proposes that portions of rules 54, 64, and 161 be waived in this case. To the extent that rules 161(a) and 162 require the filing of a contemporaneous request for a permanent classification change as a prerequisite for a market test, the Postal Service asks for a waiver of that requirement. The Commission has determined that the Postal Service's RPN proposal is not appropriately filed under its market test rules. It is, however, treating this proposal as if filed pursuant to its provisional service change rules. See 39 CFR 3001, subpart

J. Accordingly, the motion for waiver of the requirement that a proposed market test be filed concurrently with a proposed permanent classification change will be dismissed as moot.

In its motion, the Postal Service argues that a formal request for a permanent classification change is unnecessary in light of the purpose of the test and the simplicity of the proposal. It asserts that the purpose of the market test is to explore demand levels at the surcharges chosen. It asserts that a permanent request formulated at this stage would essentially duplicate the market test that it requests, but could not reflect any modifications that market experience might prompt. Therefore, it argues, it would be more productive to formulate a permanent proposal after market experience was gathered. It asserts that the simplicity of the proposal obviates the need for the extensive documentation that would ordinarily accompany a request for permanent changes to classification and rate schedules. It argues that Docket No. MC98-1 (Mailing Online) provides a precedent for allowing a market test to proceed even though it is not part of a proposal for a permanent classification change. United States Postal Service Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures, July 16, 2004, at 1, 4.

The Postal Service's position that the market test rules can be appropriately invoked when the market test is not undertaken concurrently with, and in support of, a proposed permanent change in the mail classification schedule is based on a strained interpretation of that rule, and of precedents that have implemented it.

The market test rules are intended to give the Postal Service a way of gaining operational experience and gathering the raw material with which to make an evidentiary record that will support a new, permanent mail classification. They contemplate minimal evidentiary support for a test that is limited in service area, duration, and potential impact on mailers and competitors. The rationale for allowing the Postal Service to proceed with a market test despite a sparse evidentiary record is that a procedure is needed to allow the Postal Service to "fill in the holes" and to make a substantial record for the associated proposed classification change where a probative record would otherwise be difficult to compile.

Associating a market test with a proposed classification change ensures that stakeholders will soon be able to evaluate a closely-related permanent

change based on a substantial record. This purpose is reflected in 39 CFR 3001.162(i), which requires that the market test include "a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission." For this reason, rules 161(a) and 162 state that a market test is to be preliminary to, and in support of, a proposed permanent classification change. See 39 CFR 3001.161(a) and the preamble to 39 CFR 3001.162.

The Postal Service's assertions that its RPN proposal is simple, straightforward, and will have little impact on existing rate and classification schedules does not obviate the ultimate need for a substantial record with which to evaluate the proposal. Docket No. MC98-1 was allowed to proceed as a market test because there was a substantial need to "fill in the holes" to support a permanent change, and there was a concurrent request to process the proposal as an experiment under rule 67 [39 CFR 3001.67] of the Commission's rules. This increased the prospect that a more substantial record would soon be available with which to evaluate the Mailing Online proposal.

The Postal Service's RPN proposal is not associated with a proposed change in the Domestic Mail Classification Schedule. It appears to be already well developed operationally and conceptually, and to have been nationally available for a considerable period of time. As the Postal Service appears to acknowledge, its RPN proposal could be cast as a proposed permanent change with little alteration. Its purpose is less to fill in unknowns that are needed to fashion a proposed permanent change, than to make a service enhancement quickly available, where the enhancement poses little risk of upsetting the *status quo*. Consequently, it is not appropriate to consider the Postal Service's RPN proposal under the Commission's market test rules.

It is, however, appropriate for consideration under the Commission's rules governing provisional service changes. These rules are available to process requests to establish provisional services that "will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration." See 39 CFR 3001.171 and 173. They are meant to facilitate "introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the

Postal Service." The Commission's provisional service change rules are designed to allow provisional service enhancements with little potential to adversely impact stakeholders to be implemented quickly without the making of an unnecessarily elaborate factual record.

The Postal Service's RPN proposal would add to the rate and service options under the DMCS rather than alter or reconfigure existing rate and classification schedules. It is a simple change, limited to one year, that is expected not to adversely effect any stakeholder. Therefore, it appears well suited for processing under the streamlined and accelerated procedures of the Commission's provisional service change rules. See 39 CFR part 3001, subpart J. Accordingly, the Commission will provisionally allow the Postal Service's filing to be processed under those rules.

*Conditional motion for waiver of certain documentation requirements.* The Postal Service asserts that there is precedent for construing rules 54, 64 and 162 not to require the full panoply of documentation called for by those rules if the proposed classification change is experimental or minor in nature. Rather than require the Postal Service to submit much of that documentation in a form that specifically addresses the minor classification change being proposed, the Postal Service argues that the Commission has been willing to consider material incorporated by reference from the most recent general rate case and from periodically reported material to largely satisfy these documentation requirements. The Postal Service states that its Repositional Notes proposal is a minor classification change that would not materially affect the rates, fees, and classifications established in Docket No. R2001-1, the most recent general rate case. It asserts that it would have no impact on Postal Service costs, and limited impact on revenues and volumes. Accordingly, the Postal Service argues, it should be sufficient that its request incorporates by reference generalized documentation from Docket No. R2001-1, and from periodic reports from past years such as Cost and Revenue Analysis reports. It asks that if the Commission construes its documentation rules strictly, and does not consider incorporation of such generalized historical documentation by reference to be sufficient, that the Commission waive certain of those rules. It lists the following rules that would need to be waived under a strict construction of their applicability: 54(b)(3), 54(c), 54(e), 54(f)(2)-(3),

54(h)(1)–(12), 54(i), 54(j)(1)–(7), 64(b)(1)–(4), 64(c)(1)–(3), 64(d), and 64(h). Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, July 16, 2004 at 1–5.

The Postal Service is proposing that RPNs be allowed on bulk letters and flats in the First-Class Mail, Standard Mail, or Periodicals subclasses. The proposed surcharge is 0.5 cent per piece for First-Class Mail, and 1.5 cents per piece for Standard and Periodical mail. USPS–T–1 at 1–5; USPS–T–2 (Direct Testimony of USPS witness Kaneer) at 3.<sup>1</sup>

*Proposed settlement procedures.* The Postal Service requests that the Commission establish settlement procedures in this proceeding. It argues that settlement of issues surrounding its request is appropriate because the proposed test is simple and straightforward, is to last for only one year, merely increases the options for mailers of certain classes of bulk mail, and involves only the testing of demand at the two prices proposed. The Postal Service notes that the Commission's market test rule contemplates that a recommend decision on the proposal be issued within 90 days. *See* rule 164. It asks the Commission to establish a date for a settlement conference in advance of the prehearing conference, and to be granted permission in advance to conduct the conference in the Commission's hearing room. It observes that expediting the processing of its proposal in this manner would help make RPNs available during the peak mailing season. *See* United States Postal Service Motion for Establishment of Settlement Procedures, July 16, 2004, accompanying its request. It adds that if a settlement conference were held before the intervention period expires, and a participant were to subsequently intervene, that the Postal Service could brief any such intervenor on the substance of the settlement conference.

The period for issuing a recommended decision under the Commission's provisional service change rules is 90 days, and the

rationale for seeking an early settlement of this case applies equally under those rules. *See* 39 CFR 3001.174.

Accordingly, the Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator, at his discretion, to schedule settlement conferences on August 9, 10, or 11, 2004, prior to the prehearing conference in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

*Further procedures.* Rule 173(b) provides that interested persons may intervene within 28 days of the Postal Service's filing of a request for permission to conduct a provisional service change. In view of the Postal Service's objective of implementing its proposal in time for the peak mailing season, the normal period for intervention under subpart J will be shortened from 28 days to 21 days. Notices of intervention will be due on August 6, 2004. Late motions for intervention will nevertheless be entertained for good cause shown. The notice of intervention shall be filed using the Filing Online system at the Commission's Web site ([www.prc.gov](http://www.prc.gov)), unless a waiver is obtained for hardcopy filing. *See* rules 9(a) and 10(a) [39 CFR 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis. *See* rules 20 and 20a [39 CFR 3001.20 and 20a].

Section 173(e) of the rules of practice [39 CFR 3001.173(e)] states that the Commission will hold hearings on a Postal Service request for a provisional service change.

when it determines that there is a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

Any participant who wishes to dispute a genuine issue of material fact to be resolved with regard to the Postal Service's RPN proposal shall file a request for a hearing by August 11, 2004. In order to assist the Commission's determination of whether a hearing is necessary, should any

written discovery be directed to the Postal Service by a participant before August 11, 2004, the Postal Service shall respond within 10 days.

*Prehearing conference.* A prehearing conference will be held on August 11, 2004 at 11 a.m. in the Commission's hearing room. Participants shall be prepared to address whether there is an issue of material fact requiring a hearing as provided by rule 173(e) [39 CFR 173(e)]. It would greatly assist the Commission if participants file supporting written argument in advance of the prehearing conference in regard to the identification of issues that would indicate the need to schedule a hearing.

*Public participation.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*It is ordered:*

1. The Commission establishes Docket No. MC2004–5 to consider the Postal Service Request referred to in the body of this Order.

2. The Commission will act *en banc* in this proceeding.

3. Notices of intervention shall be filed no later than August 6, 2004.

4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

5. The Postal Service's RPN proposal will be processed under subpart J of the Commission's rules of practice [39 CFR 3001, subpart J].

6. The Postal Service's Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures is dismissed as moot.

7. Answers to the Postal Service's Motion for Filing Requirements and Conditional Motion for Waiver of the portions of rule 54 and 64 cited in that motion are due on August 6, 2004.

8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences on August 9, 10, or 11, 2004, and at such times deemed necessary by the settlement coordinator.

9. A prehearing conference will be held on August 11, 2004, at 11 a.m., in the Commission's hearing room.

<sup>1</sup> At page 1 of the Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Market Test, dated July 16, 2004, accompanying the Postal Service's request, the Postal Service states that the proposed surcharges are "1½ cents for RPNs on First-Class Mail and ½ cent for RPNs on Standard Mail and Periodicals." On July 20, 2004, the Postal Service filed errata to this notice, confirming that the proposed rate is ½ cent for applying an RPN to a First-Class mailpiece, and 1½ cent for applying an RPN to a piece of Standard or Periodical mail. On the same date, it filed errata to Attachment E to its request correcting the relevant proposed DMCS and rate schedule sections.

10. Participants who wish to request a hearing on the Postal Service's Request in this docket to conduct a market test shall submit such a request, together with statements in conformance with 39 CFR 3001.173(e), no later than August 11, 2004.

11. The Postal Service shall provide responses to any written discovery requests submitted before August 11, 2004, within 10 days.

12. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

Issued: July 22, 2004.

By the Commission.

**Garry J. Sikora,**

*Acting Secretary.*

[FR Doc. 04-17094 Filed 7-28-04; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

**DATE OF MEETING:** July 19, 2004.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 69 FR 41860, July 12, 2004.

*Addition:* Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2004-1, Experimental Periodicals Co-Palletization Dropship Discounts for High Editorial Publications.

At its closed meeting on July 19, 2004, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

#### CONTACT PERSON FOR MORE INFORMATION:

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 04-17447 Filed 7-27-04; 3:54 pm]

**BILLING CODE 7710-12-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50067; File No. SR-OPRA-2004-03]

### Options Price Reporting Authority; Order Approving an Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise Guideline 1 of the Capacity Guidelines To Confirm That it Is Within the Authority of the Independent System Capacity Advisor To Make Determinations Concerning the Establishment, Modification or Removal of Output Throttles From the OPRA System

July 22, 2004.

On May 7, 2004, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").<sup>3</sup> The proposed amendment would revise Guideline 1 of the Capacity Guidelines to confirm that it is within the authority of the Independent System Capacity Advisor ("ISCA") under the OPRA Plan to make determinations concerning the establishment, modification or removal of any throttle on the output of the OPRA System. Notice of the proposal was published in the **Federal Register** on June 23, 2004.<sup>4</sup> The Commission received no comment letters on the proposed OPRA Plan amendment. This order approves the proposal.

Guideline 1 of the Capacity Guidelines in the OPRA Plan sets forth the "Function and Authority of the ISCA." The purpose of the proposed amendment to Guideline 1 is to include in the Capacity Guidelines an express statement that the authority of the ISCA would include the authority to establish

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

<sup>4</sup> See Securities Exchange Act Release No. 49871 (June 16, 2004), 69 FR 35082.

a throttle limiting the output of the System to less than the total capacity available in the System, and to modify or remove any such throttles that may be established from time to time.<sup>5</sup> OPRA believes that throttling System output to less than total System capacity could sometimes be an appropriate way to limit the maximum message-handling capacity that vendors and subscribers would be required to have.

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>6</sup> The Commission believes that the proposed OPRA Plan amendment is consistent with Section 11A of the Act<sup>7</sup> and Rule 11Aa3-2 thereunder<sup>8</sup> in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

Specifically, given the recent establishment of the ISCA and its responsibilities in planning and implementing System modifications, the Commission finds that it is appropriate for OPRA to clarify in the Plan the ISCA's authority to make decisions with respect to System output throttles. The Commission believes that providing the ISCA with this authority should ensure that these decisions are not influenced by competitive considerations among the parties to the OPRA Plan.

It is therefore ordered, pursuant to section 11A of the Act,<sup>9</sup> and Rule 11Aa3-2 thereunder,<sup>10</sup> that the proposed OPRA Plan amendment (SR-OPRA-2004-03) be, and it hereby is, approved.

<sup>5</sup> The output throttle that is the subject of the proposed amendment would serve to limit the total output of the OPRA System. It would be different from the OPRA System's "dynamic throttle," which allows any unused System capacity to be temporarily and dynamically allocated to a participant exchange that needs additional capacity on a short-term, interruptible basis. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 14, 2004.

<sup>6</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 240.11Aa3-2.

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> 17 CFR 240.11Aa3-2.