

ORDER NO. 1460

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Addition of Every Door Direct Mail –
Retail to the Product List

Docket No. MC2012-31

ORDER APPROVING ADDITION OF POSTAL SERVICES TO THE
MAIL CLASSIFICATION SCHEDULE PRODUCT LISTS

(Issued September 7, 2012)

I. INTRODUCTION

On July 10, 2012, the Postal Service filed a request pursuant to 39 U.S.C. § 3642 and 39 CFR 3020.30, *et seq.*, to modify the Mail Classification Schedule (MCS) by adding Every Door Direct Mail – Retail (EDDM-R) to the market dominant product list.¹ The Commission approves the Request.

¹ Request of the United States Postal Service to Add Every Door Direct Mail – Retail to the Mail Classification Schedule, July 10, 2012 (Request). On July 18, 2012, the Postal Service filed a correction to its Request. United States Postal Service Notice of Errata to Request of the United States Postal Service to Add Every Door Direct Mail – Retail to the Mail Classification Schedule, July 18, 2012.

II. PROCEDURAL HISTORY

Background. The Postal Service first began offering EDDM-R as an experimental product pursuant to Commission authorization of a market test in Docket No. MT2011-3.² In its notice of intent to conduct this test, the Postal Service stated that EDDM-R was a Standard Mail product “designed to make advertising through the mail more accessible and attractive for small and medium sized businesses.”³ As part of the market test, the Postal Service stated its intent to collect the following data: number of customers; total volume sent; average size of mailing; volume of mail entered by location; proportion of mail entered by day of the week; and shape of the mail being entered. *Id.* at 7. A number of commenters opposed the Postal Service’s proposal.⁴

In Order No. 687, the Commission found that: (1) the Postal Service had adequately demonstrated that the experimental product constituted a significantly different product from any other product offered within the preceding 2 years as required by 39 U.S.C. § 3641(b)(1); (2) the market test would comply with the requirement in 39 U.S.C. § 3641(b)(2) that it not result in undue market disruption; and (3) EDDM-R was correctly characterized as a market dominant product, thereby satisfying the requirements of 39 U.S.C. § 3641(b)(3). Order No. 687 at 8-11. The Commission also accepted the Postal Service’s estimate of anticipated revenues and statement of intent to monitor revenues to ensure that the \$10 million annual revenue limitation provided for in 39 U.S.C. § 3641(e)(1) was observed. *Id.*

² Order Approving Market Test of Experimental Product—Marketing Mail Made Easy, March 1, 2011 (Order No. 687). The experimental product was originally named “Marketing Mail Made Easy” (MMME), but was renamed “Every Door Direct Mail—Retail” (EDDM-R) during the market test. See *id.* at 1 n.1. In this Order, the Commission refers to the product as EDDM-R.

³ Notice of the United States Postal Service of Market Test of Experimental Product—Marketing Mail Made Easy, January 12, 2011, at 2 (Notice of Market Test).

⁴ Opposition of the Newspaper Association of America, February 4, 2011; Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Initial Comments Regarding Market Test of Experimental Product—Marketing Mail Made Easy, February 4, 2011 (Valpak Market Test Comments); Valpak Dealers’ Association, Inc. Reply Comments Regarding Market Test of Experimental Product—Marketing Mail Made Easy, February 15, 2011 (Valpak Market Test Reply Comments); and Comments of the Public Representative, February 4, 2011.

On January 23, 2012, the Commission granted the Postal Service's request for an exemption from the \$10 million annual revenue limitation.⁵ The effect of the exemption was to increase to \$50 million the annual revenue limitation applicable to the EDDM-R market test. See 39 U.S.C. § 3641(e)(2).

Postal Service Request. The Postal Service considers the EDDM-R market test to have been successful and proposes to add EDDM-R to the MCS as a market dominant product. The Postal Service identifies only three differences between the experimental product tested in Docket No. MT2011-3 and the product that it now proposes to add to the MCS. Those differences involve the maximum and minimum number of pieces that apply to each mailing and the applicable price per piece.⁶

As now proposed, all customers, including mail service providers (MSPs), who meet the following requirements will be eligible to purchase the EDDM-R product:

- A daily maximum of 5,000 pieces and a daily minimum of 200 pieces per mailer per ZIP Code (unless there are fewer than 200 active deliveries in a ZIP Code, in which case, the actual number of active deliveries for that ZIP Code);
- Entry of, and payment for, each mailing at the Destination Delivery Unit (DDU) responsible for delivery;
- Preparation of mailpieces in accordance with the Simplified Address option for Standard Saturation Mail;
- Qualification of mailpieces as Standard Mail flats, each weighing less than 3.3 ounces;
- Inclusion of an approved indicia on each mailpiece;
- Registration with the Postal Service by each customer who does not have a Permit account in order to permit tracking of that customer's mailing data;
- Presentation of USPS-approved documentation with the total number of active deliveries by route; and

⁵ Order Granting Request for Exemption from Annual Revenue Limitation, January 23, 2012 (Order No. 1164).

⁶ Response of the United States Postal Service in Opposition to Request of David B. Popkin for a Presiding Officer's Information Request, July 24, 2012, at 1-2 (Postal Service Response in Opposition).

- Submission of a sample mailpiece together with documentation at the time of mailing.

Mailings for city, rural, and highway contract route delivery destinations would be eligible and simplified acceptance procedures would be available at retail units for qualifying mail. The price of the product would be 16.0 cents per piece—an increase from the 14.2 cents per piece charged during the market test. See Order No. 687 at 3; Postal Service Response in Opposition at 1-2.

On July 11, 2012, the Commission issued Order No. 1399 providing formal notice of the Request, establishing the instant docket to consider the Request, appointing an officer of the Commission to represent the interests of the general public, and setting July 30, 2012 and August 6, 2012, as the deadlines for initial and reply comments.⁷

On July 19, 2012, David B. Popkin filed a notice of intervention and a request for issuance of an information request.⁸ The Postal Service responded in opposition.⁹ As discussed in section III below, the issues raised in Popkin's request for an information request are addressed by the Postal Service in reply comments filed August 6, 2012. Accordingly, the Popkin request for an information request and the Popkin Motion are denied as unnecessary.

Initial Comments. The following persons filed initial comments in response to Order No. 1399: David B. Popkin (Popkin); the National Newspaper Association (NNA);

⁷ Notice and Order Concerning Request to Add Every Door Direct Mail—Retail to the Mail Classification Schedule, July 11, 2012 (Order No. 1399).

⁸ David B. Popkin Notice of Intervention, July 19, 2012; and Request of David B. Popkin for a Presiding Officer's Information Request, July 19, 2012 (Popkin Request for Information Request).

⁹ Response of the United States Postal Service in Opposition to Request of David B. Popkin for a Presiding Officer's Information Request, July 24, 2012, (Postal Service Response in Opposition). The filing of the Postal Service's opposition precipitated the filing by Popkin of a request for leave to respond and a response. Motion of David B. Popkin for Leave to File a Response to the United States Postal Service Opposition to My Request for a Presiding Officer Information Request, July 26, 2012 (Popkin Motion); David B. Popkin Response to United States Postal Service Opposition to My Request for a Presiding Officer Information Request, July 26, 2012 (Popkin Response).

Valpak Direct Marketing Services, Inc. and Valpak Dealers Association, Inc. (Valpak); and the Public Representative (PR).¹⁰

Popkin Brief. Popkin suggests that the Postal Service could improve EDDM-R service by allowing mailers to use letter-size mailpieces in addition to flat-shaped mailpieces. Popkin Brief at 1. He also requests confirmation of the points he sought to confirm in his request for an information request. *Id.* Finally, he states there is no justification for the 10 percent increase in the price for EDDM-R mailpieces. *Id.* at 2.

NNA Comments. NNA notes that it expressed significant reservations regarding EDDM-R, but “did not vehemently oppose the Market Test.” NNA Comments at 3. NNA states that the experience of its members with EDDM-R “has been mixed” and that “[i]n a different climate, the product might find acceptance as an opportunity for community publishers.” *Id.* at 3, 5. The “different climate” referred to by NNA consists of “three other unwelcome phenomena,” namely (1) uses of Critical Entry Times and mail verification rules that NNA claims increase mailing costs and inhibit the ability to reach customers; (2) slower, inferior service due to the closing of mail processing plants; and (3) the proposed Negotiated Service Agreement (NSA) with Valassis in Docket No. MC2012-14.¹¹ NNA alleges that there is “a growing belief within the industry” that the Postal Service is attempting to take away advertising from publishers by offering new competitive mail programs. *Id.* at 5-6.

NNA takes the position that the Postal Service’s Request leaves many questions unanswered, and that the Postal Service has not yet satisfied its burden of demonstrating compliance with 39 U.S.C. §§ 3622 and 404a. *Id.* at 1. NNA urges the

¹⁰ Initial Brief of David B. Popkin, July 30, 2012 (Popkin Brief); Comments of the Newspaper Association on the Postal Service’s Request to Add Every Door Direct Mail—Retail to the Mail Classification Schedule, July 30, 2012 (NNA Comments); Valpak Direct Marketing Services, Inc. and Valpak Dealers Association, Inc. Initial Comments on Request of the United States Postal Service to Add Every Door Direct Mail—Retail to the Mail Classification Schedule, July 30, 2012 (Valpak Comments); and Public Representative Comments on Addition of Every Door Direct Mail—Retail to the Product List, July 30, 2012 (PR Comments).

¹¹ On August 23, 2012, the Commission approved the Valassis NSA. Order Approving Addition of Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market Dominant Product List, August 23, 2012.

Commission to defer a decision on the Request and require the development of a more complete record. *Id.* at 1-2. NNA states further that after a more fully developed record is available, the Commission should invite a round of comments upon issues of law, including the potential consequences of unfair competition. *Id.* at 14.

Valpak Comments. Valpak previously opposed the experimental product in Docket No. MT2011-3. See Valpak Market Test Comments; Valpak Market Test Reply Comments. In this proceeding, Valpak asserts that the Postal Service has failed to comply with Commission imposed requirements that the Postal Service provide data on the impact of EDDM-R on carrier operations and costs. Valpak Comments at 6-8. Valpak also argues that the Postal Service has not reported to the Commission as directed regarding the potential cannibalization by EDDM-R of other mail products. *Id.* at 8-10.

PR Comments. The Public Representative contends that the EDDM-R minimum volume requirement is unclear and states that additional explanation is needed. PR Comments at 2, 4-5. The Public Representative also asserts that the Postal Service has failed to provide information that the Commission, in its order in the market test proceeding, directed the Postal Service to provide in any request to add EDDM-R to the MCS product list. *Id.* at 3, 5-7. The Public Representative takes the position that the Commission should approve the Postal Service Request conditionally; subject to the receipt of additional information. *Id.*

Reply Comments. Reply comments were filed by the Postal Service and Mail Boxes, Etc., Inc. (MBE).¹²

Postal Service Reply Comments. In its reply comments, the Postal Service: clarifies aspects of EDDM-R to provide a clearer understanding of the product; explains how it complied with the Commission's directive regarding the impact of EDDM-R on operations, provides further information regarding advertising costs; and explains why it

¹² Reply Comments of the United States Postal Service, August 6, 2012 (Postal Service Reply Comments); Mail Boxes, Etc., Inc. Reply Comments Regarding Addition of Every Door Direct Mail—Retail to the Product List, August 6, 2012 (MBE Reply Comments).

does not believe EDDM-R will cause harm to the marketplace. Postal Service Reply Comments at 2.

MBE Reply Comments. MBE's reply comments support the addition of EDDM-R to the market dominant product list and address the comments of those who oppose the requested addition. MBE Reply Comments at 1.

III. COMMISSION ANALYSIS

A. Statutory Authority to Add New Products and Regulatory Requirements

The addition of new products to the market dominant or competitive product lists is authorized by 39 U.S.C. § 3642. Subsection (b)(3) specifies three considerations to which the Commission must give due regard in reaching any determination that a product should be added to either product list:

(3) Additional considerations.—In making any decision under this section, due regard shall be given to—

(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

(B) the views of those who use the product involved on the appropriateness of the proposed action; and

(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

Regulations governing Postal Service requests to modify the product lists are contained in 39 CFR part 3020, subpart B. Rule 3020.32 specifies information that must be included in the Postal Service's supporting justification for its Request. In addition to these generally applicable regulatory requirements, the Postal Service Request in the instant proceeding is subject to the requirements of Commission Order Nos. 687 and 1164 in the market test proceeding.

B. Postal Service's Support for Its Request

The Postal Service supports its Request with two attachments. Attachment A includes proposed MCS language for the EDDM-R product. Attachment B sets forth the Postal Service's Statement of Supporting Justification. Included in Attachment B is a discussion of how EDDM-R satisfies the objectives of 39 U.S.C. § 3622(b) and the factors of 39 U.S.C. § 3222(c); a description of the availability and nature of private

sector enterprises engaged in delivery of the product; information on the views of those who use the product regarding the appropriateness of adding the product to the product list; a description of the likely impact on small business concerns of the addition of the product to the product list; and information responding to the Commission's directives in Order Nos. 687 and 1164.

C. Issues Raised by Commenters

Commenters raise a number of issues and concerns regarding both the MCS language and the purported justification for adding EDDM-R to the market dominant product list. Commenters organize their arguments largely by subject matter, generally without reference to specific statutory standards. In this section, the Commission addresses commenters' arguments by subject matter as presented. In the two sections that follow, sections D and E, the Commission applies the statutory standards applicable to the Postal Service's Request, relying, in part, on conclusions reached in this section.

1. Factual Issues and MCS Language

Popkin requests confirmation of several points. Popkin Comments at 1-2. In its reply comments, the Postal Service confirms that (1) there is a 200-piece minimum for EDDM-R, except when there are fewer than 200 delivery points in an entire ZIP Code; (2) a mailer has two options with respect to any given carrier route/box section, namely, sending to residential customers or to all customers; (3) deliveries of EDDM-R will be made only to actual customers, rather than to empty residences or post office boxes that are not in use; and (4) the number of actual deliveries available on each carrier route and each mail box section are available on the Postal Service's website at <https://eddm.usps.com/eddm/>. Postal Service Reply Comments at 3.

The Public Representative questions whether or not the proposed MCS's minimum volume language requires mailers to enter 200 pieces in addition to all

addresses on one carrier route or box section. PR Comments at 4.¹³ The Postal Service states that it does not intend the 200-piece minimum to be additive and that if there are more than 200 addresses on a carrier route, the 200-piece minimum would be satisfied. Postal Service Reply Comments at 3-4. The Postal Service states further that, if necessary, the MCS language could be restated as “at least all addresses on one carrier route or box section, but not fewer than 200 pieces, unless there are fewer than 200 pieces in the entire ZIP Code, in which case the minimum is all available addresses within the ZIP Code.” *Id.* at 4.

The clarifications provided by the Postal Service resolve the questions raised in the comments filed by Popkin and the Public Representative. As a result, the Commission accepts the Postal Service’s restated minimum volume language.

2. Price Increase Issue

The price for EDDM-R during the market test was 14.2 cents per piece. In its Request, the Postal Service announced that it planned to increase the price to 16.0 cents per piece. Request, Attachment B at 1. In his initial brief, Popkin argues that “there is no justification for the approximate 10% increase in the fee.” Popkin Brief at 2. The Postal Service responds by arguing that the higher price is justified by the customer convenience of allowing retail entry of EDDM-R mail at DDUs and the absence of the permit fee that is charged when EDDM mail is entered at a Business Mail Entry Unit (BMEU). Postal Service Reply Comments at 5-6. The Postal Service also notes that BMEU mailings are entitled to a lower price than the EDDM-R mailings at DDUs because they are higher volume mailings. *Id.*

¹³ In its proposed MCS language, the Postal Service specified the minimum volume requirement for EDDM-R as:

Minimum: At least all addresses on one carrier route or box section, and 200 pieces, except if the entire ZIP code has fewer than 200 pieces, in which case the minimum is all available addresses within the ZIP Code.

Request, Attachment A at 2.

The Postal Service has flexibility to establish whatever initial price it deems appropriate. No commenter suggests that the price is unlawful. Moreover, since the price previously charged for EDDM-R mail was collected as part of a market test, the increase proposed in connection with the addition of EDDM-R to the market dominant product list does not constitute a price increase otherwise subject to 39 U.S.C. § 3622(d).

3. Data Issues

Market tests are a valuable tool enabling the Postal Service to assess the viability of potential postal products before they are added to the MCS product lists. See 39 U.S.C. § 3641. Market tests afford the Postal Service the opportunity to experiment with new product offerings, to test its assumptions regarding the proposed product before committing to a permanent product offering, and to gather potentially valuable market intelligence. Market tests offer mailers and other interested persons the opportunity to express concerns regarding, and suggest changes to, proposed products before they become permanent product offerings. Market tests afford the Commission the opportunity to obtain information and data for use in evaluating a proposed product and any concerns expressed by interested third parties.

Among the concerns expressed by commenters in the EDDM-R market test proceedings were concerns that EDDM-R would not increase the number of postal customers or postal revenues.¹⁴ See Order No. 687 at 4-5. In addition, commenters were concerned that EDDM-R might adversely impact carrier operations, costs, and competition in general. See Order No. 1164 at 3.

¹⁴ From the beginning, the objective of EDDM-R has been to attract new postal customers and increase Postal Service revenues. Notice of Market Test at 4 (“The Postal Service expects to expand its customer base and generate additional, highly profitable volume.”); Reply Comments of the United States Postal Service in Response to Order No. 649, February 15, 2011, at 3 (“By approving this test, the Commission will be enabling the Postal Service to test an approach that has the potential to bring in many new business users, increase incremental volume and revenue from existing infrequent small-volume mailers, and provide a less restrictive mailing option for all businesses to compete with alternative marketing channels.”); Request, Attachment B at 11 (“The product has been designed to generate revenue from new mailers.”).

As it has in other market test proceedings, the Commission directed the Postal Service to file periodic reports containing information obtained from the market test.¹⁵ Responding to concerns regarding the ability of EDDM-R to attract new customers and revenues, the Commission directed the Postal Service to include in those quarterly reports information concerning “[t]he total number of customers that used a different postal product or postal service for marketing in the 90 days prior to mailing [EDDM-R].” Order No. 687 at 13. In a footnote, the Commission suggested that “[s]uch data could be garnered from mailers by requiring a statement on the mailing form such as ‘My business has/has not used a different direct mail product, or the services of a shared mail or mail consolidation business, in the 90 days preceding this mailing.’” *Id.*, n. 8.

In its orders approving the market test of EDDM-R, the Commission advised the Postal Service that if it were to propose offering EDDM-R as a permanent product, it would be required to support such a proposal with data demonstrating the impact of EDDM-R on carrier operations, and to estimate advertising and other product specific costs. *Id.* at 13; Order No. 1164 at 6.

Valpak, NNA, and the Public Representative all argue that the Postal Service has failed to provide the data required by Order Nos. 687 and 1164. Valpak Comments at 6-8; NNA Comments at 9-12; PR Comments at 5-7. NNA argues that additional information should also be provided by the Postal Service before the Commission acts on the Postal Service’s Request. NNA Comments at 10-14.

New customer data. To date, the Postal Service has filed quarterly reports for five fiscal quarters.¹⁶ Each report purports to provide the number of customers who used a different postal product or postal service for marketing in the 90 days prior to using EDDM-R.¹⁷ The information contained in those reports suggests that EDDM-R is attracting significant numbers of new customers. For example, the quarterly report

¹⁵ See, e.g., Order Authorizing Gift Card Market Test, April 28, 2011, at 15 (Order No. 721).

¹⁶ Reports and, in some cases, amended reports have been filed for FY2011-Q3; FY2011-Q4; FY2012 Q-1; FY2012 Q-2; and FY2012 Q-3.

¹⁷ See, e.g., Every Door Direct Mail – Retail FY2012, Q3 Data Collection Report, August 9, 2012.

covering the period from April 1 through June 30, 2012, reported 27,817 customers using EDDM-R, of which only 1,556 used a different postal product or service during the preceding 90 days. *Id.* Such data would appear to support the Postal Service's statement in its Request that "[t]he market test has attracted many new customers...." Request, Attachment B at 3.

Both Valpak and NNA question whether the Postal Service has adequately addressed the question of whether EDDM-R mailers who participated in the market test in Docket No. MT2011-3 were, in fact, new customers. Valpak Comments at 8-10; NNA Comments at 6-7. Citing the Every Door Direct Mail-Retail Audit Report (MS-AR-12-004), May 7, 2012 (Audit Report), prepared by the Postal Service Office of Inspector General, Valpak argues that the Postal Service has no idea of whether users of EDDM-R are simply transitioning mail that is currently being sent by the mailer through shared mail programs or using a mail service provider's permit. Valpak Comments at 9-10. Citing the Audit Report, Valpak contends that the market test authorized in Docket No. MT2011-3 could result in "the cannibalization of existing mail volume" and risk loss of the entire \$50 million of revenue authorized annually by the market test. *Id.* at 10. Valpak asserts that the uncertainty over the impact of the market test on existing mail volumes is due to the Postal Service's failure to collect data as directed by the Commission in Order No. 687. *Id.* at 8-9. NNA questions how the Postal Service asks new customers whether they have previously used the mail and asserts that the Postal Service should be required to examine prior advertising histories of new EDDM-R customers more closely before concluding that EDDM-R is generating new mail volume. NNA Comments at 8.

The Postal Service responds to the foregoing criticisms by arguing that the methodology it used to determine the number of new customers was the most appropriate way to capture such data at the time, because it was the simplest, it avoided confusion associated with customer input, and it avoided complicating the mailing or registration process. Postal Service Reply Comments at 5. The disputed methodology employed by the Postal Service involved reviews of whether EDDM-R

mailers had used a mailing permit during the 90 days prior to their EDDM-R mailings. *Id.*

The problem with the Postal Service's methodology for determining the number of new customers generated by EDDM-R is, as asserted by Valpak and NNA, that reliance solely upon searches of prior permit mailings by EDDM-R mailers completely ignores the possibility that EDDM-R mailers had used other postal products or services, such as shared mail or services by mail consolidators, during the 90-day period preceding their EDDM-R mailings. Had the Postal Service followed the data collection method suggested by the Commission in Order No. 687, more meaningful new customer data may have been collected. Whatever merit there may be to the reasons offered by the Postal Service for electing not to follow the Commission's suggestion, the methodology chosen by the Postal Service to determine the number of new EDDM-R customers is biased in favor of overstating the number of such new customers.

While it appears that the number of new customers and revenues associated with those new customers is necessarily overstated, it would not be reasonable to assume, as has the Postal Service Office of Inspector General, that *all* EDDM-R revenues will be offset by revenue losses caused by the migration of mailers to EDDM-R from other postal products or services. Not only does such a perfect "worst case scenario" appear to be implausible, it is also contradicted by Postal Service representations that it has found significant interest in EDDM-R from businesses that have not previously used the mail as an advertising medium. *E.g.*, Request, Attachment B at 7. Moreover, it is fair to expect that the Postal Service's decision to increase the price for EDDM-R mailpieces above the price for DDU saturation flats, *id.* at 1, should deter losses from customer migrations to EDDM-R from other mail products and services. The Commission therefore concludes that EDDM-R is generating new business.

Carrier and cost impact. The Postal Service acknowledges that the Commission specifically directed it to support any request to add EDDM-R to the market dominant product list with data on carrier and cost impacts. *Id.* at 12; Postal Service Reply

Comments at 7. It asserts, however, that “[c]urrent USPS systems do not afford an effective method to identify and track EDDM-R mailings’ impact within the postal system.” Request, Attachment B at 12. With respect to both the carrier and cost impact issues, it explains the limitations on its ability to collect data, offers alternative approaches to the type of data collection envisioned by the Commission, and describes the status of its efforts to collect data on EDDM-R.¹⁸

EDDM-R is a saturation mailing. The Postal Service defines saturation mailings, such as EDDM-R, Saturation/High Density Flats and Parcels, and EDDM-BMEU mailings, as sequence set mailings. Request, Attachment B at 12; Postal Service Reply Comments at 6. Different types of saturation mailings on the same route (such as EDDM-R or EDDM-BMEU) can be combined for deliveries in one of several ways. They can be combined by direct casing, by merging multiple bundles of saturation mailings with other mail, or they can be taken to the delivery route as a “third bundle.” Request, Attachment B at 12. The Postal Service asserts that if different types of saturation mailings are combined on the same route, “operations cannot make a distinction between them at the carrier route level.” Request, Attachment B at 12; Postal Service Reply Comments at 7.

The Postal Service alleges that the problem of distinguishing between EDDM-R and other types of saturation mail is compounded by several factors. First, the type of carrier route (*e.g.*, a foot and park-and-loop type route) and the number of sequence sets (*i.e.*, saturation mailings) may increase the number of bundles that a carrier must deal with on any given day of the week, which, in turn, may result in a deferral of the delivery of one or another saturation mailing. Request, Attachment B at 13; Postal Service Reply Comments at 7-8. Thus, the impact of EDDM-R on delivery depends upon when and how many EDDM-R mailings are entered for delivery on the same day

¹⁸ The Postal Service states that during Q4 of FY 2012 its data systems began collecting data on the “EDDM” marking, but not specifically “EDDM-R.” Recordation of EDDM-R cost data will not occur until Q1 of FY 2013 (*i.e.*, October 1 through December 31, 2012). Postal Service Reply Comments at 4, 6.

with other mailings. Postal Service Reply Comments at 8. The Postal Service asserts that the timing and quantity of EDDM-R mailings cannot be anticipated. *Id.* Furthermore, EDDM-R mailings entered during the market test period were spread nationally at many facilities by many mailers. *Id.* at 9. This made the isolation of EDDM-R mailings from other saturation mailings difficult. *Id.* Finally, since EDDM-R mailings are entered at DDUs, they are only in the postal system for a short time and receive no automated processing. *Id.* at 8.

Until more definitive data can be collected, the Postal Service seeks to address the carrier and cost impact issues by using current costs and operational data for saturation mail (of which EDDM-R would be a type) as proxies. Thus, using an attributable cost of \$0.077 per piece for Standard Mail High Density/Saturation Flats and Parcels, the Postal Service estimates cost coverage of approximately 208 percent at the proposed EDDM-R price of 16 cents per piece. Request, Attachment B at 3. Thus, even if the attributable cost of EDDM-R was double the attributable cost of the proxy, EDDM-R would still have a positive contribution. From an operational standpoint, this Saturation Mail proxy reflects casing of 25 percent of saturation mailings. *Id.* at 12. The Postal Service submits that the Saturation Mail proxies justify adding EDDM-R as a permanent product. *Id.* at 3. The Postal Service also states that overall saturation mail volume has been down in recent years and that the impact of EDDM-R “should be manageable.” Postal Service Reply Comments at 7.

In addition to its contention that it is appropriate to use proxies to assess cost impact, the Postal Service responds to NNA’s assertion that direct cost measurements that fairly attribute costs to EDDM-R are necessary to ensure that additional cost burdens are not placed upon other mailers. It argues that one should not assume that EDDM-R is responsible for any additional costs imposed by multiple saturation mailings. *Id.* at 6-7.

In response to questions raised by NNA and the Public Representative regarding advertising costs, the Postal Service updates its anticipated advertising costs through

the end of FY 2012 and argues that those costs are significantly below the \$20.2 million of estimated contribution for EDDM-R. *Id.* at 9-10.

Based on the information presented by the Postal Service and commenting parties, the Commission concludes that potential carrier and cost impacts do not preclude the addition of EDDM-R to the market dominant product list. The Commission accepts the Postal Service's explanation of the limitations on its ability to collect the data that Order Nos. 687 and 1164 had directed the Postal Service to present in support of the instant Request. Under the circumstances presented in this case, the Commission concludes that the use of proxies and the particular proxies chosen by the Postal Service in assessing the impacts of EDDM-R are appropriate.

Nevertheless, the Postal Service's failure to develop this information is problematic, compounded by the fact that disclosure of these limitations was not made until after the Postal Service sought to add EDDM-R to the product list.¹⁹ The collection of relevant data is essential for market tests to have meaning and value to the Postal Service, mailers, other interested persons, and the Commission. 39 U.S.C. § 3641 authorizes the Postal Service to undertake market tests of experimental products. Other regulatory provisions are superseded during such tests. To be most effective, tests should include collection of relevant volume and cost data to help inform any decision to seek or approve permanent authority.

The Commission anticipates initiating a rulemaking in the near future to clarify its expectations and any future Postal Service obligations to collect such information. While use of proxies is often acceptable, the Commission expects future experimental products, particularly those likely to be proposed as permanent, to be supported by more thorough data collection efforts. If prior to the completion of the anticipated rulemaking the Postal Service initiates any market test, it should undertake to collect such relevant data as are necessary to support a request that a product be added to the market dominant or competitive product list. If unable to collect such data, the Postal

¹⁹ Once it was apparent that collection of relevant data was proving to be infeasible, the Postal Service should have informed the Commission earlier of this problem.

Service should advise the Commission as soon as practicable (experimental products are generally subject to regularly scheduled reporting requirements), and provide an explanation of its inability to do so.

Finally, the Commission notes the Postal Service's assurances that it will begin collecting EDDM-R during Q1 of FY 2013, while reassuring, have been qualified. For example, the Postal Service states that "[t]hese [data] systems will be able to report on EDDM-R *assuming the mail is properly marked and there is considerable volume separate from other High Density and Saturation flats for reliable costing.*" Request, Attachment B at 13 (emphasis added). Similarly, in its reply comments, the Postal Service states that "[t]he only way that the Postal Service data systems will be able to begin to report costs associated with EDDM-R is when the mail is properly marked, and when there is considerable EDDM-R volume separate from other High Density and Saturation for reliable costing." Postal Service Reply Comments at 8. These qualifications on the Postal Service's ability to collect data raise the possibility that future Postal Service Annual Compliance Reports may not contain data currently anticipated. If that occurs, the Commission expects the Postal Service to provide an explanation for the inability to collect such data, an identification of alternative data collection methods considered, and a description of the methodology used to present whatever EDDM-R data the Postal Service ultimately relies upon.

4. Issue of the Need for EDDM-R

NNA questions the need for EDDM-R in a "local advertising market [that] is a hotbed of competitive activity." NNA Comments at 8. NNA suggests that the Postal Service could use EDDM-R to put a small newspaper or mail service provider out of business, but be unable to continue marketing EDDM-R, thereby producing a net loss of mail volume. *Id.*

By contrast, Popkin suggests that the Postal Service could improve EDDM-R by allowing mailers to utilize letter-size mailpieces. Popkin Brief at 1.

In reply comments, MBE, an organization of over 4,000 small businesses, states that it views EDDM-R as “an economical saturation mailing program, previously available only to large mailers.” MBE Reply Comments at 1. MBE also states that there is a “need for alternative forms of local advertising” and that EDDM-R is a “‘win-win’ for local mailers and the Postal Service.” *Id.*

In its reply comments, the Postal Service argues that EDDM-R is “another medium for businesses to have access to the Postal Service for their direct mail needs” and that “[b]y attracting new customers to using the mail, EDDM-R could actually help newspapers and MSPs by creating a new source of customers.” Postal Service Reply Comments at 12. Finally, the Postal Service opposes Popkin’s suggestion that EDDM-R be expanded to include letter-size mailpieces. It argues that saturation mailings of simplified address letter-shaped pieces can already be entered at bulk mail entry units for locations served by rural carriers and that, with the addition of flat-shaped EDDM-R mailpieces, mailers will have “an adequate variety of advertising options.” *Id.*

The Commission accepts NNA’s representation that local advertising markets are, or at least can be, very competitive. However, that fact by itself does not preclude the Postal Service from adding EDDM-R to the market dominant product list. Nor would the introduction of additional competition into the marketplace, by itself, be contrary to any statutory mandate. Moreover, it appears from MBE’s comments that some small mailers view EDDM-R as a welcome addition to their advertising options. A further demonstration of need is NNA’s acknowledgment that some of its members use EDDM-R.

5. Issue of Using Postmasters to Market EDDM-R

NNA also questions the wisdom and propriety of using local postmasters as a sales force for EDDM-R. NNA Comments at 9. None of the points asserted by NNA precludes the addition of EDDM-R to the market dominant product list. With respect to permitting postmasters to participate in the marketing of EDDM-R, there appears to be no evidence to suggest that postmasters’ other duties materially or significantly impair

their ability to assist in selling the EDDM-R product. Similarly, NNA fails to provide any support for its suggestion that postmasters are facing “a huge conflict of interest” situation by virtue of their possession of “confidential information on the scope and reach of newspaper TMCs and their paid products.” *Id.* Nor does NNA offer any basis for its suggestion that postmasters might be unfairly favoring specific printers or mail designers. *Id.* at 13. To the extent that NNA’s suggestion could be read as an allegation of unlawful discrimination under section 403(c), it lacks substance. The position of postmasters vis-à-vis newspapers and mailers using EDDM-R is no different than their position vis-à-vis newspapers and mailers using other Standard Mail products to advertise. Without any evidence suggesting that unlawful discrimination has occurred or is occurring, the Commission cannot conclude that the addition of EDDM-R to the market dominant product list violates section 403(c).

6. Issue of Unfair Competition

A recurring theme throughout NNA’s comments is its claim that the Postal Service has failed to demonstrate that EDDM-R “has not created unfair competition, particularly against smaller business in the advertising and mail service provider sectors.” *Id.* at 1. It appears to base this generalized allegation of unfair competition on sections 3622 and 404a of title 39, but does not explain how it believes these provisions

apply to the EDDM-R proposal. See *id.* at 1, 6, 13.²⁰

On the issue of competition, NNA makes a number of assertions, some of which are critical of the Postal Service, such as claims that the EDDM-R market test has “increased competitive tensions and generated ill will toward the Postal Service;” that some postmasters have urged publishers to divert regularly-mailed TMC/shopper programs to EDDM-R; and that the Postal Service may be attempting to drive businesses away from newspapers to other commercial printing operations; that the conversion of advertising from NNA members’ newspapers to EDDM-R may undermine Postal Service revenues; and that the Postal Service has taken other actions outside the parameters of the EDDM-R product, such as approval of the Valassis Negotiated Service Agreement that constitute “unwelcome phenomena.” *Id.* at 4-6.

On the other hand, NNA notes that a “few newspapers...have used EDDM to provide customers with one more product offering to supplement newspaper advertising.” *Id.* at 5. In that connection, NNA states that the Chairman of the NNA Postal Committee has “provided industry training through...workshops around the country on how Simplified Addressing and EDDM can be used by newspapers to provide targeted direct mail sales to advertisers along with newspapers’ product mix of in-paper and TMC/shopper advertising. *Id.* at 3-4.

²⁰ The only express reference to section 3622 appears on page 1 of NNA’s comments where it states that the Postal Service’s Request “does not yet demonstrate compliance with 39 U.S.C. § 3622....” *Id.* at 1. On page 6 of its comments, NNA alludes to comments it filed in Docket No. MC2012-14. *Id.* at 6 *citing* Comments of National Newspaper Association, Inc. on the Postal Service’s Proposed Negotiated Service Agreement with Valassis, Inc., May 23, 2012 (NNA NSA Comments). NNA’s Valassis Comments make several references to sections 3622. See NNA NSA Comments at 1, 6, 12. However, NNA does not explain how the references to section 3622 in its NNA NSA Comments apply to the facts presented in the instant proceeding. With respect to section 404a, the NNA comments in the instant proceeding contain references to that section on pages 1, 6, 13. The reference on page 1 simply refers to section 404a. The reference on page 6 refers to comments filed by Valpak and the Newspaper Association of America in the earlier market test proceedings for EDDM-R in Docket No. MT2011-3. *Id.* at 6 *citing* Opposition of the Newspaper Association of America, February 4, 2011, at 8-9; Valpak Marketing Test Reply Comments at 2-3. While NNA states that it “shares many of their concerns,” it does not identify or discuss which of those concerns it shares and how they relate to section 404a. *Id.* Finally, the reference to section 404a on page 13 of the NNA Comments states without elaboration or explanation that “[a] subsidiary question is whether the tests for impact upon small businesses in 39 U.S.C. § 404a are implicated in these processes” [*i.e.*, the Postal Service’s processes for responding to prospective EDDM-R mailers’ questions regarding mailpiece design and printing services.] *Id.* at 13.

The Postal Service responds to NNA's allegations of unfair competition by pointing out that while "[s]mall and medium-sized businesses may be the most logical beneficiaries of [the EDDM-R] product,...any mailer, regardless of size or business type, who meets the basic eligibility requirements, may use the service." Postal Service Reply Comments at 11. The Postal Service notes further that mail service providers and newspapers have used the product; that mail service providers and newspapers can market EDDM-R to the same customers the Postal Service might target; that any cost savings that the Postal Service could pass on to small and medium-sized business can be passed on by mail service providers and newspapers to their customers. *Id.*

The Postal Service suggests that, in some respects, limitations on shape, weight, entry location, volume and frequency of each mailing restrict EDDM-R more than other mail products. *Id.* In a similar vein, the Postal Service argues that there is no evidence to support the proposition that the creation and mailing of an EDDM-R mailpiece is significantly less expensive than currently available advertising options. *Id.* at 12. Finally, the Postal Service asserts that EDDM-R has the potential to create new sources of customers for mail service providers and newspapers and that, in any event, any decline in these types of businesses is more likely to be caused by diversion to electronic media. *Id.*

In its reply comments, MBE endorses EDDM-R as filling a "need for alternative forms of local advertising" by noting that EDDM-R gives "local printers and mailers...access to a mailing program previously enjoyed by only large, saturation-density capable mailers," and by arguing that "EDDM-R gives smaller mailers and print shops more business opportunities, not fewer." MBE Reply Comments at 1-2.

Upon consideration of the foregoing, the Commission is not persuaded by NNA's general allegations of unfair competition. None of the allegations of unfair Postal Service actions is substantiated. Moreover, even if these allegations were deemed to be adequately demonstrated, they are, as NNA itself admits, anecdotal. NNA Comments at 4.

The Postal Service points out that EDDM-R is available to “any mailers who decide to use a flat-shaped product to reach all available deliveries in one or more carrier routes.” Postal Service Reply Comments at 11. It is clear from the record that this would include NNA members, some of whom use the product. NNA Comments at 4-5. Indeed, NNA has conducted workshops around the country to train NNA members to use the EDDM-R product. *Id.* at 3-4. Perhaps most telling is NNA’s statement that if it were not for other actions taken by the Postal Service, such as entering into the Valassis Negotiated Service Agreement, a different climate would exist in which the EDDM-R product “might find acceptance as an opportunity for community publishers.” *Id.* at 5. Whatever the “climate” created by those other Postal Service actions, it does not warrant Commission rejection of EDDM-R without a more persuasive demonstration that EDDM-R does not satisfy section 3642.

D. The Standards of Section 3642

The Commission is required by section 3642(b)(3) to give due regard to the following three criteria in deciding whether to add a new product to the product lists: (1) the availability and nature of enterprises in the private sector engaged in the delivery of the product; (2) the views of those who use the product involved on the appropriateness of the proposed action; and (3) the likely impact of the proposed action on small business concerns. 39 U.S.C. § 3642(b)(3)(A)(B), and (C).

1. The Availability and Nature of Enterprises in the Private Sector

Commenters identify a variety of private sector enterprises engaged in the distribution of advertising circulars. These enterprises include mail service providers, shared mail program providers, and newspapers. See Valpak Comments at 2; NNA Comments at 4, 7, 8; and Postal Service Reply Comments at 2.

While NNA suggests that the Postal Service might use EDDM-R to drive small newspapers and printers out of business, that suggestion is unsupported. See NNA Comments at 8. The Postal Service counters by suggesting that EDDM-R may

generate new business opportunities for small newspapers and mail service providers. Postal Service Reply Comments at 12.

The Commission concludes that private entities, including newspapers, mail service providers, and alternate delivery enterprises are, and will continue to be, engaged in the delivery of advertising circulars.

2. Views of EDDM-R by Those Who Use the Product

MBE, an organization of over 4,000 small businesses, sees a need for alternative forms of local advertising and views EDDM-R as a welcome addition to the advertising options of small mailers. MBE Reply Comments at 1-2. MBE asserts that EDDM-R gives small mailers and print shops more, not fewer, business opportunities. *Id.* In MBE's opinion EDDM-R gives local printers and mailers access to a mailing program previously enjoyed only by large, saturation-density capable mailers. *Id.* MBE argues that EDDM-R is an economical saturation mailing program that is a "win-win" for local mailers and the Postal Service. *Id.* at 1.

NNA states that some of its members have used EDDM-R and that NNA members' experiences have been mixed. NNA Comments at 5. As users of EDDM-R, NNA members appear to acknowledge EDDM-R's positive potential. *Id.*²¹

The record demonstrates that users endorse EDDM-R and support its addition to the market dominant product list. Users' support for the product is also corroborated by the demand for it.

3. The Likely Impact of EDDM-R on Small Businesses

NNA, Valpak, and the Public Representative question (1) whether EDDM-R will generate business, or will merely cannibalize other mail products to the detriment of

²¹ As competitors of the Postal Service, NNA's members view EDDM-R as a threat as well as a potentially beneficial new product. *Id.* at 6 ("Under the circumstances, the modest gains newspapers might experience with EDDM are overshadowed by the threatening presence of the Postal Service's looming competitive threats."). The views of NNA members as competitors of the Postal Service and the Commission's response are addressed in section III.D.3, *infra*.

mail service providers or shared mail programs offered by other private sector enterprises; (2) whether EDDM-R will adversely impact existing carrier routes and customers served on those routes; and (3) whether the direct or indirect costs of EDDM-R will adversely impact other mailers.²² Each of these questions relates to the data collection requirements imposed by the Commission in the market test proceedings in Docket No. MT2011-3, which the commenters assert the Postal Service has failed to satisfy. NNA Comments at 10-12; Valpak Comments at 6-8; PR Comments at 5-7. NNA also argues that EDDM-R service will result in unfair competition. NNA Comments at 1, 3-6, 13.

The Postal Service responds to these contentions in its reply comments. Postal Service Reply Comments at 4-5 (new customer issue), 6-10 (carrier and cost impact issues), 10-12 (unfair competition issue). MBE views the addition of EDDM-R to the market dominant product list as a positive development for small mailers and print shops. MBE Reply Comments at 1-2.

For the reasons discussed in sections III.C.3 and 6, above, the Commission concludes that EDDM-R will generate new business; that potential carrier and cost impacts do not preclude the addition of EDDM-R to the market dominant product list; and that none of the allegations that the Postal Service is competing unfairly has been substantiated.

The Commission concludes further that the impact on small businesses of adding EDDM-R to the market dominant product list is likely to be mixed. Some distributors of advertising circulars may be impacted negatively, while others may be impacted positively either by the use of EDDM-R or by an increase in their traditional forms of business from businesses that elect to advertise by means of EDDM-R. Businesses that use advertising circulars to promote themselves will experience potentially positive impacts from the availability of EDDM-R. With the addition of any new product, some

²² None of the commenters attempt to distinguish between potential impacts on small businesses and large businesses. In considering their comments, the Commission has assumed that the points raised by commenters relate to at least some small businesses.

customer shifts among products is to be expected and is, in general, permitted by title 39.

E. Other Considerations

Compliance with Section 404a. NNA alleges that the addition of EDDM-R to the market dominant product list would violate 39 U.S.C. § 404a. NNA Comments at 1, 6, 13. However, NNA does not explain why, or how, the provisions of section 404a apply to EDDM-R.

Section 404a expressly provides that, unless otherwise authorized by law, the Postal Service may not “establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself....” 39 U.S.C. § 404a(1). Violations of section 404a are subject to complaint pursuant to 39 U.S.C. § 3662. The addition of a product to the market dominant product list pursuant to section 3642 does not constitute the adoption by the Postal Service of a rule or regulation pursuant to 39 U.S.C. § 401(2). The Postal Service’s Request was filed pursuant to 39 U.S.C. §§ 3622 and 3642 and applicable Commission rules. The addition of EDDM-R to the market dominant product list is consistent with those statutory and regulatory provisions.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Postal Service's request to add Every Door Direct Mail-Retail to the market dominant product list is granted.
2. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LISTS

The following material represents changes to the product lists codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket No. MC2012-31. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part A—Market Dominant Products

1000 Market Dominant Product List

Standard Mail (Commercial and Nonprofit)

Every Door Direct Mail – Retail
