

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

MARKET TEST OF EXPERIMENTAL PRODUCT –
COLLABORATIVE LOGISTICS

Docket No. MT2009-1

**RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO ORDER NO. 199 REQUEST FOR SUPPLEMENTAL INFORMATION**

In Order No. 199, the Commission gave notice that the Postal Service had given notice, pursuant to 39 U.S.C. § 3641(c)(1), of the initiation of a market test of a “Collaborative Logistics” experimental competitive product. In that Order the Commission posed several questions, seeking supplemental information, by today. The answers to those questions, numbered 1 through 8, are attached. Each question is stated verbatim and is followed by the response.

In addition to providing these responses below, the Postal Service also provides notice that the implementation date for this market test has been revised to May 7, 2009. This revision is dictated by the fact that the Postal Service’s Federal Register notice was not published until April 7, 2009. See 74 Fed. Reg. 15,785-86. Section 3641(c)(1) requires that this notice appear at least 30 days before the implementation date of the market test.

Respectfully submitted,

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1. Please provide the Governors' decision, if any, authorizing initiation of the experimental product.

RESPONSE:

A written Governors' Decision was not necessary for the reasons set forth below. The Governors were informed of the market test and consented to its initiation.

The Governors are required to issue a formal Decision whenever they establish rates and classes for "competitive products" pursuant to section 3632 of title 39. A product subject to a market test is an "experimental product," however, which is clearly distinct under the PAEA from competitive products (or from "market dominant products").

In particular, competitive products are defined in section 102(9) of title 39 as being those products "subject to subchapter II of chapter 36," meaning they are subject to classification in the Mail Classification Schedule ("MCS") under section 3631 (and, by extension, section 3642), the Governors' Decision and notification process of section 3632, and the regulatory requirements of section 3633. Similarly, market dominant products are defined in section 102(8) as those products "subject to subchapter I of chapter 36," meaning they are subject to classification in the MCS under section 3621, (and, by extension, section 3642) and regulation under section 3622. Experimental products, meanwhile, are not subject to either subchapters I or II of chapter 36; rather, they are subject to regulation under section 3641, which is in subchapter

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III.¹ The distinction between experimental products and market dominant or competitive products is also apparent in other provisions of the statute.² The Commission has also recognized that experimental products are not categorized as a “market dominant product” or a “competitive product.”³

While section 3641(a)(2) does not expressly identify section 3632 as a provision that is waived for an experimental product, it does set forth a specific notice provision in section 3641(c), which does not require a formal Governors’ Decision. In particular, section 3632 requires that the “Governors” issue a written “rate or class decision,” setting forth “a statement of explanation and justification” explaining how its decision is consistent “with the requirements of [subchapter II] and regulations promulgated under section 3633.” On the other hand, section 3641(c)(1) simply requires the “Postal Service” issue a “notice” that “describ[es] the nature and scope of the market test” and

¹ In addition to experimental products, subchapter III also sets forth section 3642, which applies to “new” market dominant and competitive products. This does not undercut statutory distinction between experimental products and market dominant and competitive products, however, because the statute expressly links section 3642 to sections 3621 and 3631. See 39 U.S.C. §§ 3642(a), 3621(a), 3631(a). The introduction of a new experimental product, on the other hand, is subject to section 3641(c), rather than section 3642.

² See 39 U.S.C. § 404(e)(5) (noting that a nonpostal service authorized to be continued “shall be regulated under this title as a market dominant product, a competitive product, or an experimental product.”); 39 U.S.C. § 3642(e).

³ See Order No. 43 at 78 (rejecting Postal Service argument that inbound international mail should not be regulated as market dominant or competitive by noting that, “Had Congress intended to exempt inbound international mail from the requirement that all products be categorized as either market dominant or competitive, it would have done so explicitly, as it did by specifically exempting experimental products from the requirements of section 3642.”), 79 (noting that, “By its express terms, section 3642(e) prohibits the Postal Service from offering any product, except an experimental product, involving the physical delivery of letters, printed matter, or packages that has not been assigned by the Commission to either the market dominant or competitive category of mail.”).

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“set[s] out the basis for the Postal Service’s determination that the market test” is authorized under section 3641. This specific provision, applicable to market tests, is controlling over section 3632.

Finally, while the Postal Service must “identif[y]” an experimental product “as either market dominant or competitive, consistent with the criteria under section 3642,” that categorization does not serve to make an experimental product that is categorized as competitive as a “competitive product” under subchapter II. This is clear from the fact that section 3642 is expressly identified as a provision that does not apply to experimental products. Indeed, the statute makes clear that a “competitive experimental product” is within “the competitive category of mail” only in one limited sense: that is, for purposes of section 3633(a)(3).

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2. Please describe: (a) the geographic market where the market test will be conducted; (b) the plan for monitoring the performance of the market test, including specific data items to be collected periodically; (c) the parameters of the market test; and (d) the criteria to be used to assess the success of the test.

RESPONSE:

(a) All markets within the contiguous 48 states will be considered.

(b) The Postal Service plans to collect data and information regarding the following

items:

- Revenue generated
- Pallet positions available for sale
- Pallet positions offered for sale
- Pallet positions sold
- Pallet positions per day of week
- Pallet positions by route lane and by miles transported
- Service performance by route lane performance
- Rate of deviations by time and mileage
- Cost of deviations
- Cost of any exceptional expenses, such as load/unload time (shipper or USPS) or delays en route
- Service performance
- Loss and damage: amount, instances, causes, safety issues
- Effects on postal operations

(c) The Postal Service will conduct the test in a controlled, structured manner, so as to understand and react, as appropriate, to issues that might arise. The test will be supported by a Headquarters control center.

(d) The two key components for success will be profitability and on-time service performance.

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3. Please describe how the product, Collaborative Logistics, will be made available to the public.

RESPONSE:

Potential users interested in utilizing the service can call the Postal Service's Shared Transportation Control Center at 866-877-7666 or email the Control Center at scontrol@usps.gov.

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4. The Notice describes the product, but does not explicitly indicate whether the product is to be classified as a postal service. Please elaborate.

RESPONSE:

A "product," including an experimental product offered pursuant to section 3641, is by definition a "postal service"; section 102(6) defines a "product" as a "postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied."¹ The definition of "postal service" in section 102(5) states, in relevant part, that the term "refers to the delivery of ... mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto." Like the typical provision of mail service, this product constitutes the physical carriage of a tangible object from Point A to Point B, with the difference being that those objects are larger than the normal mailpiece. Thus, this product simply constitutes a limited, experimental expansion of what is a "mailable package," to include materials (loaded on pallets) that are carried by the Postal Service under the terms of a Collaborative Logistics agreement. There is nothing in title 39 that prevents the term "mailable package" from being understood to constitute such items; rather, the statute states that the size and weight limits for mailable matter may be revised, without limitation as to how large that matter can be.² Here, the Postal Service is acting to increase those size

¹ Of course, the one exception to this rule is that grandfathered nonpostal services are to be treated as if they were "products," pursuant to section 404(e)(5).

² Earlier versions of the postal reform legislation would have limited the definition of "postal services" to "the physical delivery of letters, printed material, or packages weighing up to 70 pounds...." See, e.g., H.R. 4970, 107th Cong. § 101 (2002). That limitation, however, was not carried forward into the PAEA.

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and weight limits on an experimental basis, for items that are carried by the Postal Service under the terms of a Collaborative Logistics agreement. Authority to take this action flows from the Postal Service's authority to market test experimental products under section 3641.³

³ Section 3682 applies to the changing of size and weight limits for mail matter carried as a market dominant or competitive product, rather than as an experimental product. In particular, the provision states that "The Postal Service may establish size and weight limitations for mail matter in the market-dominant category of mail consistent with regulations the Postal Regulatory Commission may prescribe under section 3622. The Postal Service may establish size and weight limitations for mail matter in the competitive category of mail consistent with its authority under section 3632." As noted in the response to question 1, of why a Governors' Decision is not required for this market test, an experimental product is distinct from the "market dominant category of mail," as well as the "competitive category of mail." Thus, section 3682 is not applicable here, nor are the Commission rules (39 C.F.R. § 3020.110 et seq.) implementing that provision. See Order No. 26 at 99 (noting that its Part 3200, Subpart F rules implement section 3682); see also *id.* at 85 (noting that, "Experimental products offered as market tests are specifically excluded from the requirements of part 3200 by 39 U.S.C. § 3641(a)(2). The Commission intends to develop separate rules allowing recognition of experimental products in the Mail Classification Schedule during the market tests to facilitate transparency."). Of course, the rules referenced in Order No. 26 regarding market tests have not yet been developed.

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5. Please identify: (a) when the “similar product,” referred to at footnote 1 of the Notice, was terminated; and (b) explain how the Collaborative Logistics experimental product is significantly different from the similar product offered previously.

RESPONSE:

(a) & (b) The market test product is not significantly different from the previous Collaborative Logistics offering that had been included in the Postal Service’s past reports of nonpostal services. The Postal Service has not entered into a Collaborative Logistics contract since November 2004 and has not reported any revenue for Collaborative Logistics since FY 2005. Accordingly, it has not been offered in more than two years, as provided in section 3641(b)(1). The legislative history of the PAEA shows that section 3641 can be used to re-introduce products that have been previously discontinued. See SEN. REP. NO. 108-318, at 17 (2004).

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6. (a) Please provide the basis upon which the Postal Service concludes that offering the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer.
- (b) Please discuss the Postal Service's efforts to determine the impact on small businesses.

RESPONSE:

- (a) As explained in the Postal Service's Notice, similar services, often called LTL (less than truckload) shipping, are provided in a competitive marketplace. LTL shipping is widely available from both well-known and less well known private firms at both published and negotiated prices. The Postal Service is unaware of any inappropriate competitive advantage that it would have over those established providers in providing this market test. Rather, the existence of these established providers will constrain the Postal Service's ability to fill the excess capacity in its transportation network.
- Furthermore, the Postal Service is unaware of any mailer who may receive an inappropriate competitive advantage due to this product. Rather, the Postal Service is open to a large variety of mailers or traditional freight shippers negotiating individual lane agreements with the Postal Service up to the limit of our excess capacity.
- (b) The Postal Service is unaware of any small business concerns that could offer comparable service. Generally LTL providers are national or regional in nature, and therefore do not fall under the small business category. To the extent that small businesses participate in the LTL market, Collaborative Logistics would provide them with an additional shipping option.

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7. Please identify all applicable federal and state laws and regulations that apply to the transportation offerings of the experimental product.

RESPONSE:

With respect to the Postal Service's offering of the experimental product the only applicable laws would be the relevant provisions of Title 39, U.S.C. The vast majority of other federal laws do not apply by virtue of 39 U.S.C. § 410, and state laws do not apply by reason of federal sovereignty. With respect to services performed by highway transportation contractors, the Postal Service's standard contracts provide that the contractors are already responsible for complying with all laws and regulations applicable to their operations.

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8. Please explain if Collaborative Logistics will use Purchased Transportation (Cost Segment 14) or Vehicle Service Drivers (Cost Segment 8).

RESPONSE:

The Postal Service anticipates that most of the market demand, and operational ability to support LTL movements will be intermediate or longer haul in nature, and thus by definition in the Highway Contract category. There may be instances, however, in which there is some market demand for shorter-haul movements. In certain major metropolitan areas such movements may include Postal Vehicle Service trips for all or part of the transport required.